

The complaint

Mr and Mrs N complain that Barclays Bank UK PLC ('Barclays') won't refund money they say was lost as the result of a scam.

What happened

In April 2022, Mr and Mrs N were approached about an investment opportunity by an introducer.

Mr and Mrs N received marketing material and brochures about a property development being done by a company I'll refer to as R. R's brochure said they were building an apartment complex, they'd sold 184 of 217 apartments off the plan, and were looking to raise £5,000,000. R offered fixed rate secured loan notes to potential investors.

Mr and Mrs N signed up for two separate options, one which provided yearly income and one that provided a monthly income of 1%. They made two payments of £25,000 from their Barclays account in July 2022.

Mr and Mrs N received their agreed monthly return of £250 in August, September and October 2022.

Mr and Mrs N say in November 2022 the monthly return decreased to £50, and they were told the company rules had changed which meant tax was applied at source. When Mr and Mrs N complained to R, they received a further payment of £200 in November and received £200 in December. Mr and Mrs N didn't receive any further returns after December 2022 and haven't received their capital back.

Mr and Mrs N believe they've been the victims of an investment scam, so they raised a fraud claim with Barclays in April 2023, asking Barclays to refund them.

Barclays looked into Mr and Mrs N's claim but declined to refund them, saying they have a civil dispute with R.

Mr and Mrs N weren't happy with Barclays' response, so they brought a complaint to our service.

An investigator looked into Mr and Mrs N's complaint but didn't recommend that Barclays refund them. The investigator wasn't satisfied that the investment was a scam.

Mr and Mrs N disagreed with the investigator's opinion and raised the following points:

- The director of R (Z) has cut all communication with investors and has gone into hiding, which aren't the actions of an honest person.
- There was fraud by false representation as R didn't own the property that they were offering the loan notes on.
- Z lied about HMRC requesting tax be paid at source and used it as a delay tactic to not pay interest and capital to investors.
- Another bank has fully refunded another investor after making the finding that it was a scam.

Mr and Mrs N have provided a substantial amount of information from R, and the security trustees. As well as from the police who are investigating R and its director Z.

Mr and Mrs N have asked for an ombudsman to review their case.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position in law is that Barclays are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Are Mr and Mrs N entitled to a refund under the CRM Code?

Barclays are a signatory of the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code defines what is considered an APP scam as "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr and Mrs N made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr and Mrs N thought this purpose was legitimate.
- The purpose the recipient (R) had in mind at the time of the payments and whether this was broadly in line with what Mr and Mrs N understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr and Mrs N were making their payments for fixed rate secure loan notes in relation to a property development. I haven't seen anything that would suggest that Mr and Mrs N didn't think this was legitimate.

So, I've gone on to consider what purpose R had in mind and whether it was in line with what Mr and Mrs N thought.

In reaching an answer on what purpose R had in mind, I've considered the wider circumstances surrounding R, its directors and any linked businesses. The key information to this case is:

- Z has cut off all communication with investors and doesn't appear to be co-operating with the insolvency service or police which is concerning, but there is a lack of evidence to show what happened with the funds. Not knowing where the funds have gone to doesn't mean they have been stolen or misappropriated, just that we don't have clear evidence to show what they were used for. This also means we don't have evidence to show that Mr and Mrs N's funds weren't used for their intended purpose.
- R had previously completed on another property development in October 2019, although I understand that it fell into financial difficulty as a result of the pandemic. It's possible that R has faced financial difficulties or there has been mismanagement. But a failed firm or investment, in and of itself, isn't sufficient to establish that the business, or those operating it, had a different purpose for the funds when they were obtained from the consumer.
- Mr and Mrs N say there was false representations by R in relation to ownership of the land. However, there was planning permission on the land, albeit we don't know who that planning permission was for. Also, the paperwork I've seen relating to the property investment doesn't say that R owned the land.
- I understand that there have been allegations that R were operating a Ponzi scheme, but I haven't seen any evidence of this.
- We've received third party information from the receiving bank, which I can't disclose due to data protection laws. However, that information doesn't allow me to safely conclude that the funds weren't used for their intended purpose.
- I'm aware there is a police investigation into the activities of R and its directors. But there isn't any evidence from that investigation, which supports that the money taken by R wasn't used for its intended purpose.
- Material new information may come to light at a later date and Mr and Mrs N can ask Barclays to reconsider their claim.

Taking all of these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say Mr and Mrs N's funds weren't used in the manner agreed by R or that the purpose R had in mind was different to Mr and Mrs N's. On that basis, I'm not satisfied that I can safely conclude that Mr and Mrs N's payments meet the definition of an APP scam as set out in the CRM Code, therefore I can't fairly ask Barclays to refund them under the CRM Code.

Is there any other reason I could ask Barclays to refund Mr and Mrs N?

Having reviewed Mr and Mrs N's statements, I'm not satisfied that the two payments they made were so unusual or out of character that I would've expected Barclays to have intervened. I say this as they had made previous payments for £20,000 in August 2021 and December 2021, as well as payments of £10,000 in October 2021 and December 2021. So, I wouldn't have expected Barclays to have identified a potential scam risk.

However, even if I thought Barclays should've intervened it wouldn't change the outcome. I say this because when Mr and Mrs N made these payments, R was a UK incorporated company which had previously completed a property development. Mr and Mrs N received

professional documentation and marketing material and there wasn't any information available in July 2022 to suggest R wasn't operating legitimately.

So, I don't think questioning by Barclays would've identified any concerns about the payments Mr and Mrs N were making.

Mr and Mrs N provided evidence of another bank fully refunding their customer after determining that their payments to R were made as the result of a scam. Mr and Mrs N say this sets a precedent. But I have to reach an answer based on the circumstances of Mr and Mrs N's case against Barclays, the evidence that's been provided by both parties in this case and whether I'm satisfied based on the evidence that Barclays can be held liable for Mr and Mrs N's loss. Another bank reaching a decision to refund their customer doesn't mean that Barclays are required to refund Mr and Mrs N, or that I would require Barclays to refund them.

I'm really sorry to disappoint Mr and Mrs N as they have lost a significant sum of money. But I'm not satisfied that I can fairly hold Barclays liable for their loss or ask them to refund Mr and Mrs N.

My final decision

My final decision is that I don't uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs N to accept or reject my decision before 5 February 2025.

Lisa Lowe
Ombudsman