

The complaint

Mr and Mrs J complain that Barclays Bank UK PLC ('Barclays') won't reimburse the funds they lost when they say they fell victim to a scam.

What happened

Mr and Mrs J hold a joint account with Barclays.

They say that a financial advisor put them in touch with a marketing agent who introduced them to an investment through a company I'll call R in my decision.

Mr and Mrs J were provided with literature that said R was seeking to raise money by issuing loan notes to partly fund the acquisition and development costs of a development project. The loan notes were said to be secured by way of a debenture over R's assets.

Mr and Mrs J signed up for a loan note that promised a 1% per month return for a twelve month period. On 17 August 2022 they made two payments to R from their joint account (of £1 and £19,999).

Mr and Mrs J believe they have been the victims of an investment scam. They raised a fraud claim with Barclays in May 2023 and sent a letter of complaint through a professional representative in November 2023.

Barclays didn't agree to reimburse Mr and Mrs J. It said they have a buyer/seller dispute which they are not responsible for, and noted that R was a legitimate company.

Mr and Mrs J were unhappy with Barclays' response and brought a complaint to this service. They said Barclays failed to protect them from fraud.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She didn't think Barclays acted unreasonably in saying Mr and Mrs J have a dispute with R. In reaching this conclusion, the investigator noted that R was involved in a previous property development scheme, and planning permission had been granted for the development at the heart of this dispute. She noted allegations had been made of a Ponzi scheme, and that R was selling properties off plan without authority to do so, but little supporting evidence had been provided.

Mr and Mrs J didn't agree with the investigator's findings. In summary, they said:

- R misrepresented the position as it didn't own the property it was offering the loan notes on, and it didn't have planning permission.
- As R didn't purchase the site, it's unclear what investors' funds were used for.
- A company that is seeking to be appointed as liquidator will undertake a full investigation to establish how investors' funds were used.
- Another bank has fully refunded another investor after making the finding that it was a scam not a civil dispute.

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.

I'm really sorry to disappoint Mr and Mrs J as they have lost a significant amount of money. But, having carefully considered all the evidence, I've reached the same answer as the investigator. I'll explain why.

In broad terms, the starting position in law is that Barclays is 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 J entitled to a refund under the CRM Code?

Barclays is 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.

The CRM Code defines 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".

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

- The purpose of the payments and whether Mr and Mrs J 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 J 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 J made the payments for a loan note in relation to a property development. I haven't seen anything that would suggest that Mr and Mrs J 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 J 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:

- The director of R 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. This 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 J'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 because 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, didn't use the funds for their intended purpose.
- Mr and Mrs J say there were false representations by R in relation to the 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.

- There have been allegations that R was operating a Ponzi scheme, but I haven't seen any evidence to support this conclusion.
- This service has received third party information from the receiving bank, which I can't disclose due to data protection laws. That information doesn't allow me to conclude it's more likely than not 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 to date which supports a conclusion that the money taken by R wasn't used for its intended purpose.

The onus is on Mr and Mrs J to prove their claim that their funds weren't used for their intended purpose. Overall, I'm not satisfied that they have provided sufficient evidence to demonstrate their funds weren't used in the manner agreed by R or that the purpose R had in mind was different to theirs. This means that I don't think Barclays acted unreasonably in saying it can't consider Mr and Mrs J's complaint under the CRM Code.

Is there any other reason I could hold Barclays liable for Mr and Mrs J's loss?

Having considered Mr and Mrs J's account activity in the twelve-month period before the payments to R, I'm not persuaded they were so unusual and out of character that Barclays ought reasonably to have intervened. But even if they were, I don't think Barclays would have raised concerns or that the payments wouldn't have been made.

When Mr and Mrs J made these payments, R was a UK incorporated company which had previously completed a property development. Mr and Mrs J received professional documentation and marketing material, and there wasn't any publicly available information in August 2022 to suggest R wasn't operating legitimately. And, Mr and Mrs J found the investment through a financial advisor.

Mr and Mrs J have provided evidence to show another bank fully refunded their customer after determining that their payments to R were made as the result of a scam. But I have to reach an answer based on the individual circumstances of Mr and Mrs J's complaint and whether I'm satisfied Barclays can fairly be held liable for their loss. I'm not required to uphold this complaint because another bank reimbursed a customer.

Mr and Mrs J's representative has expressed concern that this service to proposing to close our investigations into R prematurely. If material new information comes to light after this decision has been issued, Mr and Mrs J can ask Barclays to reconsider their claim.

I'm really sorry to disappoint Mr and Mrs J, but I'm satisfied Barclays has acted fairly.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 19 February 2025.

Jay Hadfield
Ombudsman