

The complaint

Mr and Mrs C complain that Barclays Bank UK PLC hasn't refunded them after they fell victim to a scam.

They are represented in their complaint by a law firm I'll refer to as K.

What happened

The background to this complaint is well-known to both parties and so my summary of events here will be brief. I have, however, taken full account of the detailed circumstances of the complaint before issuing this decision.

In July 2017 Mr and Mrs C were told about an investment opportunity by a long-standing friend. This led to them being introduced to several parties involved in the investment. I won't set out all the different relationships here, to keep as much clarity as possible. But ultimately, Mr and Mrs C were given the details about an investment in foreign exchange, commodities, and indices, all to be carried out by professional investors.

What Mr and Mrs C didn't know at the time was that the investment was in fact a scam in the form of a Ponzi scheme. With that in mind, I'll now refer to the other parties involved as 'the scammers'.

Mr and Mrs C were persuaded to invest having been given a lot of persuasive information about how the investment would work and what the returns would be. They were sent contracts and were required to complete client onboarding processes. An initial investment of £30,000 was made, with that money being sent from Mr and Mrs C's Barclays account on 9 August 2017. They expected to receive a 5% monthly return over the course of the next year. Those returns were paid as expected, with the first payment of £1,500 being received on 11 September 2017.

Happy with how things were going, Mr and Mrs C decided to invest more money in 2018. A further £50,000 was invested and sent to the scammers on 6 April 2018, and then £40,000 more on 7 November 2018. As before, returns were received in line with expectations. That is until May 2019, when a final payment was made to Mr and Mrs C. Returns were meant to continue after that, but they received no further payment.

Mr and Mrs C were still in contact with the scammers, and they were explaining that there were some operational problems that were being taken care of and that, once done, investment operations and the payment of returns would resume. But that never happened and one of the main parties involved was petitioned for liquidation. Around the same time other concerning details about the parties involved started to emerge and, ultimately, the scam was revealed.

Mr and Mrs C contacted Barclays about what had happened in February 2024, via their representative K. K said that Barclays had failed to properly protect Mr and Mrs C as it didn't question the unusual payment activity when the three transfers were made. And, because of that, K said Barclays ought to be responsible for Mr and Mrs C's losses, as they could have been avoided.

Barclays responded to say it didn't believe it had done anything wrong. It didn't think it needed to question the payments when they were being made as they didn't appear

unusual. It went on to say it believed Mr and Mrs C appeared to have a buyer-seller dispute that they could pursue. It said it wouldn't refund any of Mr and Mrs C's losses on that basis.

K referred Mr and Mrs C's complaint to our service and one of our investigator's considered what the fair and reasonable outcome ought to be. He didn't believe the complaint should be upheld.

He said the first payment made by Mr and Mrs C couldn't be considered by this service as it had happened too long ago. He noted it was made more than six years prior to the complaint date, and also more than three years after Mr and Mrs C ought fairly and reasonably to have known they had cause to complain.

Our investigator went on to consider the other two payments and whether Barclays had done anything wrong. He acknowledged the transactions did stand out as unusually large, but he didn't think Barclays could have detected the scam or could have said anything that would have dissuaded Mr and Mrs C from proceeding. In making those findings he noted the sophistication of the scam and the level of engagement Mr and Mrs C had had with the scammers. And he also noted that by the time Mr and Mrs C were making the second payment they'd received all returns as expected, totalling £10,500.

Mr and Mrs C didn't accept the investigator's findings. K said there were some inaccuracies in what the investigator had said, including how and when Mr and Mrs C became aware something was wrong. K also said that Barclays should remain responsible for Mr and Mrs C's losses if it failed to act fairly and reasonably at the time, and that there shouldn't be a consideration of what Mr and Mrs C might have done had the bank intervened.

As there Mr and Mrs C didn't accept our investigator's findings the complaint has been passed to me.

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 issuing two decisions for this complaint: one which deals with the matter of whether we can consider all the payments made toward the scam, and one which addresses whether Barclays ought to bear any responsibility for Mr and Mrs C's losses.

This decision deals with the second of those issues, and whether Barclays ought to bear any responsibility for Mr and Mrs C's losses. I'm sorry to disappoint them, but I don't find it should. I'll explain why.

In my other decision, which addresses what payments can be considered by our service, I found (like our investigator) that the first payment made toward the scam is out of scope. So these findings won't address the merits of any complaint in respect of that payment.

The starting point at law is that Mr and Mrs C are responsible for any payments made from their account which are properly authorised. That remains true even where payments were made as a result of a scam.

Barclays has a duty to process any authorised payment instructions quickly and with minimal friction.

These two points are set out in the Payment Service Regulations (both the 2009 and 2017 versions) and confirmed in Mr and Mrs C's account terms and conditions.

However, taking into account relevant rules, regulations, industry guidance, and best practice standards, there are times when it would be fair and reasonable for a firm like Barclays to pause on processing an authorised payment. Such action might be taken where unusual and/or out of character payments are being made, and where it would be fair and

reasonable for the firm to question the nature of such payments to mitigate against the risk of a customer suffering financial harm through fraud.

The Contingent Reimbursement Model (CRM) Code was introduced in May 2019. And this was put in place to see the victims of scams reimbursed in most cases. K has referred to the CRM Code extensively in its submissions to this service. But it isn't relevant to Mr and Mrs C's complaint as the Code isn't retrospective and was introduced after all Mr and Mrs C's payments had been made.

The question of whether Barclays ought to have intervened to question either of the two payments I'm able to consider is relevant to the outcome of this complaint. I don't accept Barclays suggestion that the payment ought not to be considered normal because they were made from a savings account, though it is true that such accounts will – generally speaking – operate differently to a current account. Spending will commonly be less frequent and individual payments might be high in value. But payments can certainly still stand out as unusual, and I think there is a strong argument for saying Barclays ought to have been concerned about a risk of financial harm through fraud for both payments.

But I also must consider whether it's more likely than not intervention would have made a difference. It's not enough to say that Barclays made an error in not intervening and so must bear the responsibility for the loss. And here, in the specific circumstances of this complaint, I'm not persuaded intervention would have made a difference. I don't find it's more likely than not Barclays would have identified that Mr and Mrs C were caught up in a scam. Nor am I persuaded it's more likely than not Mr and Mrs C would have acted differently if Barclays had warned against investment scams.

A key reason for my finding here is that by the time Mr and Mrs C were making the second payment to the investment they'd already received a year's worth of returns exactly as expected. This was no small sum, with £10,500 having been received. And indeed, those returns continued into 2019, meaning the same logic would apply to the third payment. Mr and Mrs C received £70,000 in returns by May 2019 and so it's understandable why they believed so strongly that everything was above board.

Had Barclays asked about what the payment was for it's fair and reasonable to assume that the conversation would have gotten onto the fact Mr and Mrs C had been invested for a year and had received exactly what was expected. And that would have suggested to Barclays the investment was genuine, just as it had convinced Mr and Mrs C. I can't see that there were other clear or obvious signs that Barclays would likely have been able to detect, and which would have suggested a scam.

The returns aren't the only factor I've considered. It's also the case that the scam was very convincing and persuasive in how it was set up. And Mr and Mrs C were introduced to it by a long-standing family friend, so there was some inherent trust in what they were being told from the outset.

It's not been made clear who this friend is and what involvement they had with the various parties connected to the scam. But the email evidence provided by K suggests the friend was very well-known to those involved in the scam. It was this friend that informed Mr C that some of his paperwork hadn't been received correctly. It's difficult to see how the friend could know that without being very close to some of the scammers.

Mr C references the friend in an email to the scammers, with the text indicating that he would certainly be known to the recipient. This suggests to me the friend had some deeper connection to the involved parties. I'm not suggesting here that Mr and Mrs C's friend is himself a scammer, but he was clearly well-known to the scammers. That this friend was so close to both the scam, for whatever reason, and Mr and Mrs C leads to my finding that his own explanations of what the investment was and that Mr and Mrs C should stick with it would have been particularly persuasive.

The evidence also shows that Mr C appears to have been introducing other people to the supposed investment over the months he was involved. I make no suggestion of impropriety here. But it does reflect how deeply convinced he was that everything was legitimate. And it follows that this detail further supports that an intervention from Barclays would likely have had little impact on him or Mrs C.

I've also seen some notes from Barclays systems where it appears there was a discussion about what the payments were for. Unusually, this conversation doesn't appear to have taken place at the time of any payment. Instead, it is recorded as having taken place on 19 January 2018. The note states that Mr C confirmed the payment from August 2017 was for an investment and who it was with. The note goes on to say, "*The customer would not explain what the investment was for*".

This means there is some evidence to show that even if there had been an intervention or warning from Barclays for payment two and three, Mr C would not have wanted to listen or engage.

There's been no direct reference to this conversation by either Barclays, K, or Mr and Mrs C. I'm unsure why that is as it seems quite relevant. But, as I'm conscious it hasn't been mentioned, I want to make clear that my findings would remain the same even without this piece of evidence.

K has referred to the outcome of other complaints made by other victims of the same scam. Some of those complaints have been brought to us whilst some have not. K has mentioned them because there are complainants that have received either partial or full reimbursement. But I must consider the individual circumstances of the complaint that is before me, and I can't comment on the merits or outcomes of other complaints. For the reasons I've explained here, I don't find Barclays ought to bear responsibility for Mr and Mrs C's loss.

My final decision

I don't uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 25 January 2025.

Ben Murray
Ombudsman