

## **The complaint**

Mr H complains that Barclays Bank UK PLC did not refund him after he fell victim to a scam.

## **What happened**

Mr H, saw an individual boarding up a property near his home. He had concerns that the land was going to be turned into a commercial lot with restaurants and a petrol station. The individual, who I will refer to as SF for the purposes of this decision, said he intended to buy the land and offered for Mr H to own part of it. Mr H agreed and initially paid £23,000 as a refundable deposit to secure the right to acquire three acres of the land. However, after this SF gave various reasons as to why more and more funds were needed.

Mr H sent a total of £544,699 between October 2022 and April 2023, from his personal account, as well as from two separate limited company accounts I will refer to as 'C' and 'S' that he was the director of. Despite paying this money, Mr H still did not have ownership of any of the land and eventually he realised he had been the victim of a scam. Mr H raised a receiving bank complaint with Barclays, however they did not agree they had made an error when opening the receiving bank account or processing the payments in question. The complaint was referred to our service and our Investigator looked into it.

They issued a view explaining they did not think the two limited companies had suffered a financial loss that Barclays had to reimburse. This was because they had seen no evidence to show that this was a business investment made by C and S, and the fact payments to SF were made from two separate limited company accounts as well as Mr H's own personal account supported that this was actually a personal investment by Mr H that he used company funds for. So, they thought it was more likely Mr H owed C and S the money as he had essentially taken out a loan from them to make the payments.

However, the Investigator did consider the payments made from Mr H's personal account into SF's account with Barclays. This was a £20,000 payment on 12 December 2022 and a £7,000 payment on 24 January 2023. They firstly explained that the evidence on file supported that Mr H had been the victim of a scam as defined by the Contingent Reimbursement Model ("CRM") Code. The Investigator felt that by the time Mr H made the £7,000 payment in January 2023 the activity on the receiving bank account was so unusual that Barclays should reasonably have intervened to find out more about the credits coming into the account. And they thought that if Barclays had done this, they could have prevented further payments being made towards the scam.

The Investigator felt liability for the loss should be shared equally between the sending bank, the receiving bank (Barclays) and Mr H with a split responsibility of 33% each. As the sending bank had already refunded 50% of the £7,000 payment, our Investigator recommended Barclays pay an additional 16% making a total refund of £1,120, plus 8% simple interest. Barclays agreed to the recommendation.

Mr H's representative disagreed with the outcome as they felt the evidence showed this was also a business investment by C and S and they provided an e-mail from C to SF in which it asked for the property to be registered in C's company name. Because of this, they felt the

payments both C and S made to the receiving bank account should also be taken into consideration.

As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

### **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 will firstly consider whether there has been a loss suffered by either C or S, and whether the payments made by them should therefore be looked into further. To determine this, I have considered whether C or S transferred the funds to the Barclays account with the intention to make a business investment. Or if Mr H was using the company funds for personal use instead, thereby essentially taking a loan from the companies.

I have firstly considered the communications I have been provided between Mr H and SF. Looking at this, I have seen nothing to indicate Mr H intended for this to be a business investment for C or S. I note that in December 2022, Mr H said in a message to SF that he was not really looking to make money on the purchase, and he did not know if he was going to sell the land or keep it for himself. This does not suggest that he was intending for this to be a profitable investment, and importantly there was no mention in the messages of this being linked to C or S at that time.

I note that the initial e-mail Mr H sent to SF in December 2022 in which he set out the agreement for the deposit to purchase three acres of the land was sent from Mr H's personal account and not either business account. And there was no mention of this being linked to the limited companies in any way.

According to Companies House, I can see that Mr H was not added as a director of C until 31 December 2022, which was around two months after he agreed to purchase part of the land with SF. I think this further indicates Mr H was intending for this to be a personal purchase that he was using C's company funds for, instead of a business investment on Cs behalf.

C's representative has highlighted that the court order against SF names both Mr H and C as victims that require reimbursement. They therefore think this evidenced C has suffered a loss. But, I also note in the court document it specifically states a number of the payments involved in the scam were paid by C, on behalf of Mr H. This therefore indicates Mr H was using C's funds for his own personal use.

C's representative has also provided an e-mail dated 16 February 2023, from C's e-mail address to SF, in which C asked for the property to be registered in its name. They have said this evidences that this was a business investment and that the returns were intended to be received and owned by the limited company. They have also said the intention was to renovate the properties and any rent would then be shared by C and another limited company in Mr H's name.

While I can see there was an intention for the land to be registered in C's name, there is still no other surrounding evidence showing the returns would be received by C. Looking at the sealed particulars of the claim and the court judgement, it states that on around 26 January 2023 due to the values involved in the sale, the agreement would now be between SF and C. This suggests the payments up to that point were an agreement between SF and Mr H, further indicating that the initial intention was for this to be a personal purchase made by Mr

H with C's funds.

The court documents also state that C agreed to purchase three parcels of the development land by way of a sub-sale. Typically, a sub sale includes an agreement for one party to purchase a property, as well as a secondary agreement for that same party to sell the investment immediately to a third party. The documents do not clearly set out who the third-party was that intended to purchase the land. But considering this, I think it is more likely C did not intend to keep the land and rent it out for profit as it's representative has indicated. And on balance, I still have not seen enough to be satisfied C intended to purchase the property for a business investment.

S made three payments to SF directly, this included two payments of £5,000 on 18 January 2023 and one payment of £45,000 on 30 January 2023. It has been accepted that S loaned the £45,000 to C for the investment, and this is confirmed in the court judgement. As a result, I do not agree that S intended to invest these funds and instead I am satisfied they were a loan to C. And as set out above, I think Mr H ultimately used C's funds for the investment for personal use. So I think this loan also extends to his responsibility.

On the balance of probabilities, having carefully considered everything available to me, I think it is more likely Mr H used both S and C's company funds for personal use when they both sent funds to SF and effectively took out a company loan. I therefore think that it is Mr H that owes the funds to C and S. As a result, I do not think we need to consider the payments made by either C or S into the receiving account further, though I will still consider them in the context of the activity on the receiving account.

I have gone on to consider the payments Mr H made from his personal account. This was a £20,000 payment on 12 December 2022 and a £7,000 payment on 24 January 2023.

Barclays has signed up to the CRM Code, this sets out what is expected of the 'Sending Firm' and 'Receiving Firm' (in this case Barclays) when payments are made or received. In summary, the obligations for the receiving firm state that firms should:

- Take reasonable steps to prevent accounts from being used to launder the proceeds of Authorised Push Payment (APP) scams.
- Have procedures to prevent, detect and respond to the receipt of funds from APP scams; and
- Where the receiving Firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.

So, with this in mind, I have carefully considered Barclays' obligations here.

Barclays has shared information with this Service as part of its obligations under the CRM code which has allowed me to investigate Mr H's complaint – though I am limited to what I can share with Mr H due to Data Protection laws, as this information is confidential.

Banks, Building Societies, and other Payment Service Providers have long standing obligations to ensure that their services aren't being used for fraudulent or illegal activities – so I would expect there to be extensive procedures in place for account openings to prevent accounts from being opened for these purposes.

However, complaints about receiving banks and any acts or omissions came into our jurisdiction from 31 January 2019 – and is not retrospective. I've seen evidence from Barclays to show that the receiving bank account was opened before 31 January 2019. This means I'm not able comment on whether there were any failings by Barclays when the

account was opened.

As Mr H made the payments after 31 January 2019, I have gone onto consider whether the activity on the receiving bank account ought reasonably to have caused Barclays any concern. While I cannot go into detail about this due to data protection reasons, I do think Barclays should have had concerns about the activity on the receiving bank account by the £7,000 payment in January. I say this because by that time, the credits received into the account in relation to the scam had increased significantly and over a two-day span between 4 and 6 January, it received £67,000 from C, a limited company. On balance, I do think there was enough unusual activity that Barclays should reasonably have had concerns and taken steps to verify the source of funds and what the payments were for. And to also verify the payments SF made out of the account following the credits.

I think it would have been reasonable for Barclays to ask for evidence to verify SF's claims, and I think it is unlikely he could have provided anything that would satisfy their questions. I therefore agree that Barclays could reasonably have prevented Mr H's loss of £7,000 on 24 January 2023.

I think liability should be split equally between all parties involved, meaning 33% of the loss should be shared between all parties in line with the CRM Code. This is because while I recognise Mr H has been the victim of a cruel and manipulative scam, I think he could have taken steps to try and protect himself along the payment journey. By the time Mr H made the £7,000 payment on 24 January 2023, SF had asked for more and more money for a number of reasons which Mr H does not appear to have verified. Despite SF asking for a significant amount of money to purchase the land, Mr H had not verified the purchase through his own solicitor or spoken in person with the solicitor who was supposedly acting on SF's behalf.

### **Putting things right**

As the sending bank has already reimbursed Mr H with 50% of the £7,000 payment, I think Barclays should therefore reimburse a further 16% bringing the total liability of the banks to 66%. This means a refund of £1,120 plus 8% simple interest from the date of the transaction to the date of settlement.

### **My final decision**

I uphold Mr H's complaint against Barclays Bank UK PLC in part and recommend it pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 May 2025.

Rebecca Norris

**Ombudsman**