

The complaint

Mr and Mrs A complain that Barclays Bank UK PLC hasn't refunded money lost to an investment scam.

What happened

Mr and Mrs A were introduced to a property investment opportunity through a specialist investment network they were a part of. And they had family members that had already invested. Those family members had been receiving returns on the money they'd put in.

Mr and Mrs A discussed the opportunity with two limited companies that were involved – I'll refer to them as Company R and Company U. They were working with a third limited company which I'll call Company A.

Company A claimed to have agreements with local councils for the provision of social housing. Company R and Company U brought in investment from people like Mr and Mrs A.

Mr and Mrs A decided to proceed with the investment on 22 July 2022, sending a total of £10,000 to Company U and signing agreements with it. However, they never received any of the promised returns. Shortly after they signed the agreements and sent the money, they and other investors began to suspect they'd fallen victim to a scam. It transpired that Company A had lied about the agreements it had with local councils.

Mr and Mrs A had none of their money back and so reported to Barclays they'd been victims of a scam. They used a claims management company to do so. But they never received an answer. Barclays says it told Mr and Mrs A they needed to specifically raise a scam claim.

Instead, Mr and Mrs A brought their complaint to this service through the claims management company. Barclays confirmed it hadn't investigated the scam up to that point, but that it's position was that Mr and Mrs A had invested with a genuine company (Company U) that had failed and so it couldn't help. It didn't believe they'd fallen victim to a scam.

One of our investigators considered the complaint and found Barclays' position to be fair and reasonable. He said that Company U – to whom payment had been made and with whom agreements had been entered – appeared to be legitimate and that it also appeared to have been caught up in a scam. He recognised Company A might have been operating a scam, but he wasn't persuaded the same was true of Company U.

Because Mr and Mrs A had made payment to a legitimate party for legitimate purposes, he couldn't say they'd been scammed.

Mr and Mrs A disagreed and asked that an ombudsman review the complaint. And so it's 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.

Having done so, I'm not upholding it. I know this will be very upsetting for Mr and Mrs A. The loss of this money will clearly have had a significant impact on them. And I know they are living with some difficult life circumstances. I also completely accept that they are a completely innocent party here that has unfairly lost money. But I'm unable to find that it is Barclays that ought to compensate them for that loss. I'll explain why.

Mr and Mrs A are considered responsible for all payments made from their account which are properly authorised. That's set out in the Payment Service Regulations (2017) alongside their account terms and conditions. There's no dispute here as to whether the payments were authorised or not.

There are times, however, when a firm like Barclays might become responsible for reimbursing authorised payments, including where a customer has fallen victim to a scam. Alongside industry best practice and guidance Barclays has signed up to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. But that Code doesn't apply to all payments a customer might make.

One of the key considerations in thinking about whether the Code applies or not is whether there's evidence to show an authorised push payment (APP) scam has taken place. The Code doesn't apply where a payment has been made for a genuine purpose but where the expected goods or services (including returns from an investment) haven't been received. That would instead be civil dispute between the parties – here Mr and Mrs A and Company U.

Having reviewed all the information and evidence available, I'm satisfied Mr and Mrs A's is a civil dispute with Company U. That is the party which has failed to deliver what was promised to them.

In making that finding I can broadly accept that Company A was operating a scam. There is significant evidence of that being the case, including it lying about agreements with local councils which would have been fundamental to the investment model.

But Mr and Mrs A's dealings were with Company U. It is to it that money was sent and with it that agreements were signed. I've not seen persuasive evidence to show – and Mr and Mrs A's representatives didn't suggest – Company U was operating a scam. It seemed to believe Company A was operating legitimately and was securing investment based on its propositions. In doing so, Company U took payment from investors and also paid returns to them (though not Mr and Mrs A). There was no deception on the part of Company U, with itself a victim of Company A's scam.

Company U was an entirely separate entity to Company A. It was established in its own right, published its own accounts, and operated its own contracts. It made and/or intended to make money from the deals it secured.

Mr and Mrs A's representatives disagreed with the position I've explained here, believing the final destination of the funds (that being A) ought to be the determining factor in establishing payment purpose and whether a payment has been made as a result of a scam.

My findings above explain why that isn't the case, and this is a specific point the Financial Ombudsman Service has confirmed with the Lending Standards Board. It's confirmed the CRM Code doesn't apply to payments made in this way, where a legitimate business with whom all agreements/contracts were entered into, providing what it itself believed to be a legitimate service, is involved.

I have considered whether there are any other reasons Barclays might be held responsible for Mr and Mrs A's loss, including outside the CRM Code. But I can't see it would be fair and reasonable to say Barclays ought to bear responsibility.

The reasoning here is broadly the same as that which I've already explained, given the payments wouldn't be defined as being made as part of an APP scam.

Even if Barclays had intervened in the payments to question Mr and Mrs A about them, from a scam prevention perspective, I'm not persuaded it could have uncovered that an APP scam was taking place or dissuaded Mr and Mrs A from proceeding. In making that finding I've considered the level of sophistication of the scam, and how persuasive it was. That's particularly true here, where Mr and Mrs A knew family members that had already invested and had received returns as promised.

When a scam is reported to a firm it ought to take steps to recover the money that was sent by contacting the firm that received the payments. But attempts like this can only be made if a scam is established. And the attempts would only go as far as the account that received them, that being the one held by Company U. It's evident that, as a legitimate entity, it transferred the money on as intended, which meant there was nothing left to recover, aside from the fact that a recovery attempt couldn't have been raised because of the nature of the payment as described in this decision.

Mr and Mrs A have specifically discussed the sophistication of the scam Company A was operating, the application of the CRM Code, and the FCA's Consumer Duty in response to our investigator's findings. They also let us know about some particular vulnerabilities that have affected them. But whilst I've taken these points into consideration, they don't change the outcome of the complaint, for the reasons I've already explained. And, to address the Consumer Duty point specifically, this was introduced in July 2023, long after they'd already made payment to Company U. As it isn't retrospective, it isn't relevant to my consideration of their complaint.

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 Mr A and Mrs A to accept or reject my decision before 2 April 2025.

Ben Murray
Ombudsman