

## The complaint

Mr M complains that Barclays Bank UK PLC ('Barclays') won't refund the money he says was lost as the result of a scam.

## What happened

The background to this complaint isn't in dispute, so I won't go into detail. But, in summary, this is my understanding of the complaint.

Mr M was introduced to an investment with a company I'll refer to as H. H was a property developer who offered loan notes.

Mr M made the following payments to H from his Barclays account.

Date	Details of transaction	Amount
5.3.2018	Payment to H	£25,000
2.8.2018	Payment to H	£100,000
31.1.2019	Payment to H	£120,000

In January 2022, H went into administration.

Through a professional representative, Mr M raised a fraud claim with Barclays. Mr M didn't receive a response, so he brought a complaint to our service.

An investigator looked into Mr M's complaint but didn't uphold it. The investigator wasn't satisfied that Mr M was the victim of an APP scam as defined by the Contingent Reimbursement Model Code (CRM Code). And, even if Barclays had intervened when the payments were made, it wouldn't have prevented Mr M's loss.

Mr M disagreed with the investigator's opinion and provided a substantive response and additional evidence. This included:

- Counsel's opinion from a KC, instructed by Mr M's representative
- A forensic report from an accountancy firm.
- A junior counsel's opinion on a judgement regarding a company I'll refer to as H2.

Mr M's representative also says:

- Mr M was vulnerable at the time of making the payments, as he had recently retired, which hasn't been taken into consideration.
- We have erred in the appropriate threshold test for intervention by Barclays. Barclays had a duty to identify risk of financial harm or suspicious transactions, intervene and ask questions about the payments, and then take appropriate action.
- We haven't taken into account the serious impact on Mr M of the loss of these funds.

As the case couldn't be resolved informally, it was passed to me to review.

## **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'd like to reassure Mr M that I have carefully reviewed and considered all of the evidence that has been provided, as well as the response to the investigator's view. Also, it's worth noting, the investigator provided a detailed response to the points Mr M raised, explaining why the additional information and new evidence didn't change the outcome they'd reached.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

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 2017 (PSR's).

### Is Mr M entitled to a refund under the CRM Code?

Barclays are a signatory of the CRM Code, which 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 M made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr M thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments and whether this was broadly in line with what Mr M 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 M was making payments to invest with H, who were a property developer. I haven't seen anything that would suggest that Mr M didn't think this was legitimate.

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

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

- H completed on three separate developments. It also had other developments it was working on, which it sold to developers after experiencing financial difficulties. This persuades me that H were operating as a genuine business at the time Mr M made his payments.
- Mr M has provided a forensic accounting report. However, this doesn't include banking or accounting records of H's and doesn't prove how the funds were used by

H, or that they weren't used for the intended purpose. H may have misrepresented certain information, filed incorrect and late accounts, and paid high commissions to introducers, but I haven't seen any evidence to say this was done with the intention of scamming investors.

- I appreciate that there are a number of subsidiary companies involved in the H group. Mr M has provided documents from a high court case against H2, which says H2 was trading while insolvent. H2 is one company within the group and is a separate legal entity to H. This evidence doesn't prove that H didn't use investors' funds for the intended purpose.
- I've reviewed the evidence provided, which Mr M says points to H operating a Ponzi scheme. And, while there may've been poor business and financial mismanagement, there is no evidence of an intention to scam investors. A failed business or financial mismanagement of a business, 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.

Taking all these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to prove Mr M's funds weren't used in the agreed manner by H or that the purpose H had in mind was different to Mr M's. On that basis, I'm not satisfied that Mr M's payments meet the definition of an APP scam and they aren't covered by the CRM Code.

If material new information comes to light at a later date, for example from the police or liquidator, which shows Mr M's funds weren't used for the intended purpose. Mr M can ask Barclays to reconsider his claim.

Is there any other reason I could ask Barclays to refund Mr M?

At the time the payments were made, Barclays should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams. Also, I'd expect Barclays to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

However, even if I was satisfied that Barclays should've intervened when Mr M made his payments, that doesn't mean that he is entitled a refund. I have to consider what is more likely than not to have happened as a result of that intervention.

Based on the evidence, I'm not satisfied that if Barclays had intervened it would've prevented Mr M's loss. I say this because all of the information available when Mr M made his payments, suggested that H was a legitimate property developer. I'm not satisfied that any questions Barclays may've asked would've raised concerns or meant that they should have refused to follow Mr M's payment instructions.

I appreciate that the returns H were offering were high, loan notes would offer higher returns than a traditional bank investment, as there is inherently more risk associated with them. And I'm not satisfied that this information, when weighed up against the other information available, meant Barclays should've been concerned. H were a UK incorporated company who had already completed on a number of property developments and investors had received returns.

Even if Barclays had suggested that Mr M complete further checks on H, I'm not satisfied that would've uncovered any concerning information that would suggest this wasn't a genuine investment.

So, I'm not satisfied that intervention by Barclays would've prevented Mr M's loss.

### Vulnerability

Mr M says he was vulnerable at the time he made the payments as he had recently retired. As I'm not satisfied that Mr M's payments are covered by the CRM Code, I can't apply those vulnerability provisions to his complaint. And I haven't seen any evidence that Barclays were made aware of Mr M's potential vulnerabilities prior to him making the payments to H.

For completeness, even if Barclays were aware of Mr M's recent retirement, I'm not satisfied that I would've expected them to take additional steps as a result. It's not for Barclays to provide investment advice, only to look out for potential risk of financial harm from fraud. And for the reasons already given, I'm not satisfied that the information available about H should've concerned Barclays if they had intervened when the payments were made.

I'm really sorry to hear about the impact this loss is having on Mr M, However, having carefully considered all of the evidence, I'm not satisfied that I can fairly hold Barclays liable or ask them to refund him.

### **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 M to accept or reject my decision before 15 September 2025.

Lisa Lowe  
**Ombudsman**