

The complaint

Mr D is unhappy Barclays Bank UK PLC won't reimburse money he lost to a scam.

What happened

In 2022, Mr D says he was introduced to some investors who had been recommended to him (Mr C and Mr R) by an acquaintance who claimed to be successfully investing with them. He attended a series of 'workshops' about a proposed investment in foreign exchange trading. Mr D says that the returns promised were 'conservative' and the investment was relatively low risk.

Mr C and Mr R traded under the name ("V") – though a limited company of a similar name wasn't set up until January 2023 and only Mr C was its director. However, in this decision, for simplicity, I've generally referred to the scheme as V.

Mr D says that V promised that it was obtaining Financial Conduct Authority ("FCA") authorisation, and he saw testimonials of other people who had successfully invested.

Mr D decided to invest. He made two payments directly to the account of Mr C, both for £5,000. Those payments took place on 11 October 2022 and 14 December 2022. Mr D says that he was able to see his investment growing by logging into an investment portal.

In March 2023, Mr D received £5,000 into his account from V. But, in July 2023, he logged in to his trading platform and saw a notice that V were no longer able to trade. He contacted the FCA who informed him that V were under investigation.

Mr D asked Barclays to reimburse him but it didn't make a decision on whether he had a reimbursable claim. Instead it paid him £50 to reflect the delays in reaching a decision.

Mr D referred the complaint to our service and one of our investigators upheld it in full. They were satisfied that Mr D had fallen victim to a scam and that Barclays ought to reimburse him. Mr D accepted our investigator's recommendation. Barclays didn't. I understand it thinks that any ongoing investigations into V should be completed before a decision is made.

As no agreement could be reached, the case was 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.

Barclays is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code"). It requires firms to reimburse victims of APP scams in all but a limited number of circumstances.

The main point of dispute here is whether V was operating as a scam or not. Barclays appears to be relying on R3(1)(c) of the CRM Code to defer making a decision on this point. R3(1)(c) says:

“If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm’s decision, the Firm may wait for the outcome of the investigation before making a decision.”

So, I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing.

There may be circumstances and cases where it’s appropriate to wait for the outcome of external investigations. But that isn’t necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren’t looking at quite the same issues or doing so in the most helpful way.

In order to determine Mr D’s complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it’s more likely than not that Mr D was the victim of a scam rather than a failed investment. But I wouldn’t proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I’m aware that Mr D first raised his claim with Barclays in October 2023 and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don’t think delaying giving Mr D an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I’d not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I’m aware the above processes might result in some recoveries for V’s investors; in order to avoid the risk of double recovery, I think Barclays would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr D under those processes in respect of this investment before paying anything I might award to him on this complaint.

For the reasons I discuss further below, I don’t think it’s necessary to wait for the outcome of the ongoing FCA investigation for me fairly to reach a decision on whether Barclays should reimburse Mr D under the provisions of the CRM Code.

In order to reach a decision, I’ve considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined as:

“...a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

DS2(2)(b) explains that the CRM Code does not apply to:

“private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier”

Of particular relevance here is whether Mr D transferred funds to V for what he believed to be legitimate purposes, but which were, in fact, fraudulent.

It's evident that V had some features that gave it the impression of operating legitimately. There are identifiable individuals associated with V who held in-person and online events to promote the investment. And many people who lost money had been introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

There is also evidence that some of the money that was received by Mr C and Mr R (though not the limited company V) did end up with a genuine FCA authorised foreign exchange platform.

However, I've found the following facts to be persuasive evidence that V was operating as a scam:

- We are now aware that V's claims of being at least in the process of being regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- Less than half of the funds sent to Mr R and Mr C was potentially used for the intended purpose of Forex trading. Whereas Mr D sent funds to V with the understanding they would immediately be moved to a trading account to be used in Forex trading, as he was told in an e-mail following his investment.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with a trading exchange and that it was regulated.
- We have also seen evidence that none of the funds sent to V's business accounts was used for the intended purpose of trading in Forex.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was sent to V was not used for its intended purpose. The evidence suggests that Miss D wasn't involved in a failed investment but a scam.

Returning to the question of whether, in fairness, I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. There is no certainty that any prosecutions will result from the FCA's investigations nor what, if any, new light they would shed on the evidence and issues I've discussed.

So, I've considered whether Mr D's should be reimbursed or not under the CRM Code.

Under the provisions of the CRM Code, Barclays can decline reimbursement by relying on a number of different exceptions. It doesn't appear to have raised any arguments about this, but for completeness, I'm satisfied that no exception to reimbursement applies. I say this because:

- Barclays has not provided any evidence that it warned Mr D before he went ahead with the payments, so it cannot demonstrate he ignored any 'Effective Warnings' and therefore cannot rely on that exception to reimbursement.

- I've also considered whether Mr D had a reasonable basis for believing that the investment was legitimate. Mr D had been recommended the investment by someone he knew, attended in-person workshops, saw testimonials from people who'd invested successfully and says that he knew people that had invested and been able to withdraw money from the scheme. And, the person described on paperwork related to his deposit as his 'introducer' was an FCA-authorised individual. I think these would have been powerful factors in convincing him of the legitimacy of the scheme.
- Although some of the claims made by V about the returns it could generate seem unlikely, Mr D doesn't appear to have recognised that, when compounded, what might appear to be modest returns would, if really obtainable, create very large returns over a relatively short period of time.
- I think the sophisticated aspects of the scam, particularly the in-person meetings and evidence that Mr D says he saw of returns (which is consistent with other victim's testimony and Mr D's own experience of being able to withdraw money), outweighs the concerns that Mr D perhaps ought to have had about the returns being claimed. Overall, I think Mr D had a reasonable basis for believing that the investment was legitimate and I don't think that any other exception to reimbursement could reasonably apply here.

Therefore I think that Mr D should be reimbursed in full under the provisions of the CRM Code, taking into account the credits he received. As I've set out, he received £5,000 from V on 6 March 2023, so his outstanding loss is £5,000.

In relation to interest, I think it should be paid from the date our investigator gave their view of this complaint (15 November 2024). I'm satisfied that the information disclosed in that view was sufficient for Barclays to conclude that Mr D had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations. Mr D has agreed to this.

My final decision

I uphold this complaint about Barclays Bank UK Plc and instruct it to pay Mr D:

- £5,000
- 8% simple interest on that amount from 15 November 2024 to the date of settlement.

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

Rich Drury
Ombudsman