DRN-5467523

The complaint

Mr and Mrs T complain that Barclays Bank UK PLC ('Barclays') declined to reimburse them, after they say they fell victim to a scam.

What happened

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, Mr and Mrs T came across an investment opportunity with a company which I will call 'B', when their friends told them they had been investing with B for more than a year. The friends showed Mr and Mrs T their returns, and told them they had met the directors multiple times. Mr and Mrs T were interested in the opportunity, so spoke to one of the directors of B. They spoke to him at length about the company and how the investment worked. They looked B up online and found nothing of concern. Persuaded to invest, Mr and Mrs T sent four payments from their Barclays account totalling £29,910 in January 2021.

Mr and Mrs T understood that they were entering into a loan agreement with B, who would reimburse the capital and 25% interest twelve months later. However, they never received any of their original investment back, nor any returns. B entered into administration in October 2022. Mr and Mrs T realised they had fallen victim to a scam, and so they raised their concerns to Barclays.

Barclays reviewed Mr and Mrs T's claim but declined to reimburse them on the basis that it believed that what happened to them amounted to a private civil dispute, rather than a scam.

Mr and Mrs T were unhappy with Barclays' response, so they escalated their concerns to our service. One of our investigators looked into what had happened and recommended that Mr and Mrs T's complaint should be upheld. They said that they were satisfied this amounted to a scam, and under the provisions of the Lending Standard Board's Contingent Reimbursement Model ('CRM') Code, Barclays were liable to reimburse them in full, along with 8% simple interest, calculated from the date of Barclays' initial decision not to reimburse her, to the date of settlement.

Barclays did not accept out investigator's recommendations. It said that it did not think that B was a scam, and that what happened to Mr and Mrs T amounted to a private civil dispute.

As no agreement could be reached, the case has been passed to me to decide.

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.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's accounts. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It is a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. Barclays was a signatory to the Code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) as:

> *"Authorised Push Payment scam, that is, 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"*

The CRM Code is also clear at DS2(2)(b) that it 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"*

If I conclude that the payment here meets the required definition of a scam then Mr and Mrs T would be entitled to reimbursement, unless Barclays has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So, in order to determine Mr and Mrs T's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that they were the victims of a scam rather than this being a failed or bad investment.

Have Mr and Mrs T been the victims of a scam, as defined in the CRM Code?

The Code does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier So, it would not apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I do not consider the first part of the definition quoted above (DS(2)(a)(i) is met in this case. This is not in dispute. But what is in dispute is whether Mr and Mrs T's payments meet DS1(2)(a)(ii). So I have gone on to consider if their intended purpose for the payments was legitimate, whether the intended purposes they and B had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of B.

From what I have seen and what Mr and Mrs T have told us, I am satisfied that they made

the payments with the intention of investing. I have not seen anything to suggest that they did not think this was a legitimate venture – and as Barclays argues this is a civil matter, it too seems to accept this.

I've then considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or a genuine investment.

The evidence I hold suggest that B was operating as a genuine forex trading investment opportunity at one point – it invested nearly £5,000,000 of investors' funds with a legitimate forex trading platform authorised and regulated in another jurisdiction, and for a number of years investors received returns which were often substantial.

I also understand that the police investigation, at last update, was continuing to investigate B, but no charges have been brought that I am aware of, against those individuals responsible for B.

However, by the time Mr and Mrs T made the payments to B, I am not satisfied that it was operating a legitimate enterprise. There is compelling evidence which establishes that investors were dishonestly deceived about the purpose of the payments they were sending to B. And so it follows that I am persuaded that Mr and Mrs T's payments to B meet the definition of an APP scam under the CRM Code, rather than a mere civil dispute. I will explain why.

B was not authorised by the FCA. It would have needed to be regulated by the FCA to take part in the activity it was alleging to be engaged in. Private investment funds do not solicit investments from the general public or retail investors, which is what B were doing here. So I am persuaded that B misled investors over regulatory requirements for the activities it was said to be undertaking, and I have seen this in writing in its managed account agreements.

Reviewing the evidence our service has received, it appears that B received approximately £28,000,000 from individual or business investors. But only £4,700,000 looks to have been used for the intended purpose of forex trading – less than 17% of the investment capital received. They made returns of roughly £4,100,000 – indicating that there was a trading loss of £600,000. Regardless of the fact that less than 17% of investment capital was traded, which resulted in a loss, roughly £19,000,000 was paid out to investors. This amounted to almost 68% of the investment capital received. The leftover funds were not traded – but instead appear to have been withdrawn to accounts linked to B or its associates.

B offered either loan agreements or managed account agreements – with returns of capital and 15-40% interest promised for the former, and a return of at least 48% for the latter. Mr and Mrs T had a loan agreement with B. There is no available evidence to suggest that B could substantiate the rate of returns their investors were expecting. Nor is there evidence that B were trading forex or otherwise investing successfully and generating the profits they claimed to be generating.

So, I am of the opinion that B were not using investor funds for the purpose in which they were understood or intended by Mr and Mrs T, and this shows that it is more likely than not that they were not a 'legitimate supplier' of the investment services they claimed to be. I do think that the evidence suggests that their conduct went beyond misleading investors about a legitimate investment opportunity, and that the real purpose of the payments received was different to what Mr and Mrs T and other investors were led to believe – and this was done through deception.

Whilst Mr and Mrs T did not receive any returns, other investors did. But it appears that any

returns that these other investors received were likely sent to encourage further investment. This further investment would either be from existing or new investors who were recommended the opportunity from others who had already invested – as Mr and Mrs T's friends had recommended B to them after they had received returns. So, even if any of Mr and Mrs T's money was used to trade forex, or otherwise invest or trade, it was likely with the intention of encouraging more investment as part of an overall scam.

So, having considered everything, I am persuaded that B was more likely than not, operating a sophisticated APP scam. I am satisfied that Mr and Mrs T's payments to B meets the definition contained within the CRM Code. The payment via a 'third party' does not alter this – as the evidence I have seen shows this was used as a receiving account by B. And so it follows that Barclays cannot fairly refuse to consider refunding Mr and Mrs T under the provisions of the CRM Code on the basis that it amounted to a private civil dispute. So, I have gone on to consider whether Mr and Mrs T should be reimbursed under the CRM Code.

Are Mr and Mrs T entitled to a refund under the CRM Code?

Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr and Mrs T. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning. A second circumstance in which a bank might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

Barclays have not provided a copy of the warning Mr and Mrs T would have received at the time they made any of these payments. So, I do not think it would be fair or reasonable for it to rely on the exception to reimbursement that Mr and Mrs T ignored an effective warning.

I also do not think that it would be fair or reasonable for Barclays to rely on the exemption to reimbursement that Mr and Mrs T sent the funds without a reasonable basis for believing that they were sending funds to a legitimate investment. Given that Barclays are still arguing that B was potentially a legitimate investment gone wrong, it would be hard to argue that Mr and Mrs T did not have a reasonable basis for belief that they were investing in a legitimate company. And I think there are other elements of what Mr and Mrs T knew at the time they made the payments that would have given them a reasonable basis for belief that B was legitimate. This includes the manner in which Mr and Mrs T were introduced to the investment – by known and trusted friends, who themselves had seen returns on their investment with B. I would also point to the fact of the meetings and communications Mr and Mrs T had with the director of B. They also received contracts and other official and professional looking documentation. They did look into B online and found nothing of concern. So, considering all of this, I do not think there was anything that ought to have led Mr and Mrs T to believe they were dealing with an illegitimate company.

With this in mind, I do not think that Barclays have established that any of the exceptions to reimbursement under the CRM Code apply here. And so, it follows that Barclays should reimburse Mr and Mrs T in full under the provisions of the Code.

Putting things right

In order to put things right, Barclays must:

- Reimburse the funds Mr and Mrs T lost to the scam; and
- Pay 8% simple interest on this amount, from the date it declined to reimburse Mr and Mrs T under the CRM Code, to the date of settlement.

As B is going through insolvency proceedings, it is possible Mr and Mrs T could recover some further funds in the future. In order to avoid the risk of double recovery, Barclays is entitled to take, if it wishes, an assignment of rights to all future distributions under this process before paying the award.

My final decision

I uphold this complaint and require Barclays Bank UK PLC to reimburse Mr and Mrs T in line with what I have said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 9 January 2026.

Katherine Jones
Ombudsman