

The complaint

Mrs C complains that Barclays Bank UK PLC ('Barclays') won't reimburse the funds she lost when she fell victim to what she now believes to have been an investment scam.

Mrs C brings her complaint with the assistance of professional representation, but in the interests of better readability in what follows I will refer solely to Mrs C – even where submissions were made on her behalf by that representative.

What happened

Mrs C holds bank accounts with Barclays. In 2021, she explains she learned of an investment opportunity from her daughter who had already invested, with what at that time appeared to be good success.

Mrs C's daughter introduced her to one of the directors in the company offering the investment. I'll refer to this company as 'Company D'. The investment would supposedly be into a large property portfolio involving long term lets and buying and refurbishing properties for later sale or rental.

Mrs C knew that her daughter had received the regular returns that Company D had promised. While her daughter's capital remaining invested, at this point the investment appeared exactly as expected and so there was no reason for her to suspect the capital would not also be repaid.

Between 22 November 2021 and 25 November 2021, Mrs C sent five payments of £10,000 to Company D. Her total investment was therefore £50,000.

Mrs C expected a rate of return of 15% per year, and she initially received this.

She was expecting to receive the return of her capital at the end of the fixed term.

However, in 2022, when another investor into Company P asked for their capital to be returned, the debt was defaulted. Company P subsequently was placed into administration in June 2022.

Ultimately, Mrs C had received a total back of £5,000 in interest but had lost the capital she'd invested. This left her facing a net loss of £45,000.

Mrs C subsequently reported the matter to Barclays as an Authorised Push Payment scam (APP scam).

At the relevant times, Barclays was a signatory to the Lending Standards Board's Reimbursement Model Code (the CRM Code).

Under the terms of the CRM Code, banks are required to refund APP scam victims unless one of a limited number of exceptions apply. Barclays declined to refund Mrs C. It has since explained that it did so on the basis that this was a private civil dispute rather than an APP scam. It notes that Mrs C had met the alleged fraudster in person and initially received

returns on the investment. Barclays also notes that while Company D has been investigated by the police no charges have yet been brought.

Mrs C didn't agree and referred her complaint to this service for review.

Our investigator considered the evidence supported the finding that this had been an APP scam rather than a private civil dispute. The investigator said the evidence suggested that while Company D might have operated legitimately initially, by the time Mrs C had invested it had ceased to be investing funds in line with what it was telling investors.

The investigator said that instead the directors of Company D latterly appeared to be linked to the directors of another company (I'll refer to this as 'Company B'). That change in operation had occurred prior to Mrs C's investment. There was convincing evidence to show that Company B had been operating as a Ponzi scheme (a type of fraudulent scheme whereby later investors' money is used to pay returns to earlier investors rather than paying these through the proceeds of business activity). Rather than using investors' funds as Company D had represented, the funds had been transferred to Company B and lost.

The investigator thought Mrs C's payments had most likely resulted from an APP scam covered by the CRM Code, and that under the code Barclays should reimburse Mrs C for her net loss of £45,000.

Barclays didn't agree. It said it thought it was unclear whether Company B was a criminal enterprise or simply a badly run business. It didn't consider there was sufficient evidence to show an intent to defraud from the outset rather than something having gone wrong within the company along the way. It said Mrs C's funds had ended up with Company B so the funds had been sent to the intended beneficiary for the intended purpose. While Barclays response has referenced Company B rather than Company D (which was in fact the company Mrs C paid and believed she was transacting with) I have assumed Barclays comments are intended to refer equally to companies D and B.

In light of Barclays' disagreement with the investigator, I have been asked to make a final decision on Mrs C's complaint.

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.

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. Where the evidence is incomplete or missing, I make my findings based on a balance of probabilities — in other words what I consider is most likely given the information available to me.

In broad terms, the starting position in law is that Barclays is 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 relevant regulations at the time (the Payment Services Regulations 2017).

But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment. Of particular relevance here is the CRM Code. Before addressing whether I consider these payments to be subject to the CRM Code, I'll first consider Barclays' comments regarding whether this complaint is one I should

consider now.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision (in the interests of fairness) or to dismiss this complaint without considering its merits. Barclays argues I should consider waiting until any police investigation or administration process is completed. There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. 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.

I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

As for investigations by liquidators/administrators, these are normally made for the purpose of maximising recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

In order to determine Mrs C'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 she is the victim of a scam rather than having simply made a failed investment¹. 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 Mrs C first raised her claim with Barclays in January 2024, 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 Mrs C 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.

Of course, I do not have the power to conduct a police-style criminal investigation into Company D. My determination of this complaint can't convict anyone of a criminal offence — that is the role of the criminal courts. I have to decide only whether it is fair and reasonable for Barclays not to have upheld Mrs C's report of an APP scam and her inherent claim for

¹ Under the CRM Code a person claiming reimbursement need not meet the criminal standard of proof ("beyond reasonable doubt"). The Code's publisher, the Lending Standards Board has provided guidance that the criminal test (or criminal conviction) is unnecessary to reach a reimbursement decision, and that where it is more likely than not that a customer has fallen victim to an APP scam a reimbursement decision should be made.

And it's worth observing here that the relevant version of the CRM Code at R4(1), R4(2), R4(3) and R4(4) refers to the right of the customer to make a DISP complaint and that they have the ability to raise a case with the Financial Ombudsman Service should they wish to or need to. In line with the general approach of our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases.

the reimbursement of her losses, through an application of the balance of probabilities.

I'm aware the above processes might result in some recoveries for Company D's creditors/investors. In order to avoid a 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 Mrs C under such processes in respect of this investment before paying anything I might award to her on this complaint.

With the above in mind, and for the reasons I discuss further below, I don't think it's necessary to wait to reach a decision on whether Barclays should reimburse Mrs C under the provisions of the CRM Code.

Has Mrs C been the victim of an APP scam as defined by the CRM Code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mrs C's claim falls within the scope of the CRM Code, which defines an APP scam at section DS1(2)(a) as:

"APP Scam

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."

To decide whether Mrs C is the victim of an APP scam as defined in the CRM Code I have considered the following points in turn:

1. The purpose of the payments and whether Mrs C thought this purpose was legitimate.
2. The purpose(s) the recipient (Company D) had in mind at the time of the payments, and whether this broadly aligned with what Mrs C understood to have been the purpose of the payments.
3. Whether there was a significant difference in these purposes, and if so, whether this difference was most likely the result of dishonest deception.

Mrs C thought she was investing in a property related investment scheme. I haven't seen anything to suggest that she didn't (reasonably) consider this to be a legitimate purpose.

So, I've gone on to consider what purposes Company D had for the transactions and whether these purposes were in line with what Mrs C had been led to believe. In reaching an answer on what purposes Company D most likely intended, I've considered the wider circumstances surrounding Company D, and linked companies.

The key information as I see it is as follows:

- Company D was a UK incorporated company and traded for a significant period of time before Mrs C made her first payment in November 2021. I accept that Company D appears to have been operating legitimately initially. However, I'm satisfied that the evidence supports my finding that this changed and that Company D was not operating legitimately at the time Mrs C made her payments.
- Mrs C believed that Company D would use her funds to purchase property, refurbish it and then either sell or rent it out for profit. I haven't seen any evidence that supports Company D had this purpose in mind in obtaining Mrs C's funds.
- This service has received information from the receiving bank, which I can't share due to data protection laws. But this evidence does not show that Company D used Mrs C's funds for the purpose she'd believed.
- The returns paid to Mrs C appear to have been funded through other investors' money rather than through the legitimate profits of business activity by Company D. In essence, Company D was also operating a Ponzi scheme.
- Rather than being used for the purpose Mrs C had believed, the evidence I have seen indicates that Company D was diverting a significant portion of investors' funds to a separate company (Company B), which claimed to be a forex trading scheme. Based on what I have been able to establish Company B, more likely than not, was in fact operating an APP scam (in the form of a Ponzi fraud²). I've considered the possibility that Company D was merely the innocent victim of Company B's fraud, but the evidence leads me to believe it is more likely than not that companies D and B were operating two separate but linked APP scams.
- Aside from the significant sums transferred to Company B, the joint administrators of Company D indicate in their report that further significant sums appear to be owed to Company D by its two directors. Directors' loans of that size do not seem consistent with the purpose Mrs C had believed Company D had for her funds. This points to the unjust enrichment of Company directors (and those of Company B) being the true purposes of Company D in procuring Mrs C's funds. Based on the evidence available to me I find it most likely these were Company D's true purposes, and that these purposes were fraudulent.

The evidence I have seen is consistent with the allegations made by Mrs C when she first notified Barclays that she believed she had been the victim of an APP scam.

Based on the available evidence, I'm satisfied on the balance of probabilities that it is more likely than not Mrs C's funds weren't used for the intended purpose and that Company D obtained Mrs C's funds as the result of dishonest deception about Company D's purposes.

So, I find that Mrs C's payments meet the definition of an APP scam under the CRM Code and fall within the code's scope.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations (or even dismiss this complaint without

² The Practical Law website neatly defines a Ponzi scheme as "A fraudulent investment that is not supported by a legitimate underlying business venture where capital from newly attracted investors is redistributed to pay profits to existing investors. Ponzi schemes usually promise high returns on a principal investment with minimal risk. Initial investors are often paid inflated returns to attract new investors so the earlier investors can get paid. When the new investment flow runs out, the scheme falls apart."

considering its merits), 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. Neither do I consider it would be appropriate for me to dismiss the complaint without considering it further (with that being a matter for my own discretion). I consider that the evidence is sufficient for me to reach a finding on the key points based on the balance of probabilities.

Does an exception to reimbursement apply?

The CRM Code says that Mrs C is entitled to a full refund unless Barclays can establish that an exception to reimbursement applies. Barclays hasn't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

The CRM Code says that a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate;
- The customer ignored an 'Effective Warning' by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case. I'm satisfied that Mrs C had a reasonable basis for believing Company D offered a genuine investment opportunity.

Mrs C had initially learned of the investment through her daughter, and from her daughter's perspective at that time, all appeared entirely as expected. That recommendation from a close family member strikes me as particularly persuasive. Mrs C had also then met with one of the directors. The returns on offer, while high, were not what I would consider obviously too good to be true. Thinking about all of the circumstances, I find Mrs C held a reasonable belief at the time in the legitimacy of who she was dealing with and the investment they were offering her.

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement can be fairly applied (as is the case here). Those requirements include the provision of what the CRM Code defines as an "Effective Warning" when a firm identifies an APP scam risk in relation to a payment.

I haven't seen any evidence that suggests there were warning signs that Company D wasn't offering a genuine investment when Mrs C made her payments. So, Barclays couldn't rely on 'basis for belief' as an exception to reimbursement.

Barclays hasn't said that an effective warning was ignored when Mrs C made the payments or provided evidence of an effective warning being presented at the time. So, it can't fairly rely on that exception to reimbursement either.

As I'm not satisfied that Barclays can rely on an exception to reimbursement, Mrs C is entitled to be reimbursed under the CRM Code (subject to what I say below).

Putting things right

As it appears there is an ongoing investigation by the police and possibly the company administrators, there exists the possibility that Mrs C may at some later date recover some of her currently outstanding loss.

In order to avoid a risk of double recovery, Barclays is entitled to take, if it wishes, an assignment of the rights to all future distributions under the liquidation or other process in respect of this investment before paying the award. If the bank elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mrs C for her consideration and agreement.

I'm aware that when Mrs C first contacted Barclays about these payments, she did so in the form of a DISP complaint. In that first contact I consider she did clearly state the basis of her scam claim, including the relevant payments she claimed for, the returns she'd received and her basis for believing this to have been a criminal scam rather than something that might otherwise be considered a private civil dispute. I consider the level of information she provided at this point was sufficient for Barclays to reasonably have identified the need to begin its investigation of a scam claim, and so to have identified that this was more likely than not an APP scam subject to reimbursement under the CRM Code.

Mrs C paid £50,000 to Company D. She received returns (supposedly profits from her investment but instead fake returns funded through a Ponzi scheme) totalling the sum of £5,000. Her net loss therefore equates to £45,000.

Had Barclays refunded her this sum within the timescales specified within the CRM Code (which should in all but exceptional circumstance be at most 15 business days after the date the scam was first reported³), then Mrs C would not have been deprived of this sum for the time she has been. To reflect that loss of use I consider it would be fair and reasonable to require Barclays to pay interest on the net loss sum at a rate of 8% simple per year. It should do so from the date I consider it ought to have reimbursed Mrs C under the CRM Code, that being 15 business days after the date she first notified Barclays that she believed she had been the victim of a scam.

Overall, I'm satisfied Mrs C was the victim of an APP scam, and she should have been reimbursed for her losses by Barclays under the terms of the CRM Code. To put matters right, Barclays Bank UK PLC should, within 28 days of receiving notification of Mrs C's acceptance of my final decision:

- Pay Mrs C the net amount she lost through these payments — this being the sum of £45,000; and,
- Pay interest on the above amount at the rate of 8% simple per year, calculated over the period running from 15 business days after Barclays Bank UK PLC first became aware Mrs C considered she might have been the victim of an APP scam until the

³ The CRM Code at R3(1) states: *"Firms should make the decision as to whether or not to reimburse a Customer without undue delay, and in any event no later than 15 Business days after the day on which the Customer reported the APP scam"*. While the CRM Code says that *"In exceptional cases, that period can be extended provided the Firm informs the Customer of the delay and the reasons for it, and the date by which the decision will be made."* it specifies that the extended date communicated to the customer should not be more than 35 business days after the day on which the customer reported becoming the victim of an APP scam. I don't consider this to have been such an exceptional case and in any event Barclays did not notify Mrs C of the date by which it would reach a reimbursement decision.

date of settlement.⁴

My final decision

For the reasons given above, I uphold this complaint and require Barclays Bank UK PLC to put matters right as I have detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 27 October 2025.

Stephen Dickie
Ombudsman

⁴ If Barclays considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs C how much it's taken off. It should also give Mrs C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.