

The complaint

Mr D complains that Barclays Bank UK PLC trading as Barclays hasn't reimbursed the money he says he's lost to a scam.

What happened

Mr D says he's fallen victim to a recognised scam run by a company I'll refer to as 'Company A'. Company A offered investment opportunities in artwork. Between April and June 2021, Mr D made one card payment and several faster payments to Company A, amounting to around £200,000, from his Barclays account. He thought he was paying for artwork which would be held in storage facilities arranged by Company A for preservation reasons, and could be sold for a profit. But I understand that he wasn't able to sell the artwork he purchased without buying more pieces in order to create a more rounded portfolio.

In 2023, Company A went into liquidation.

Mr D feels he has been the victim of a scam, and he'd like Barclays to reimburse him. Barclays has declined to reimburse the disputed faster payments under the provisions of the Lending Standards Board's Contingent Reimbursement Model ('CRM Code') because it believes that Company A is a business that has unfortunately failed – not a scam. Additionally, it's said that the disputed payments were not out of character in consideration of Mr D's usual account activity.

Mr D referred a case against Barclays to this Service. In summary, he told us that:

- Company A misrepresented the value of the artwork available to investors – leading to an inevitable loss in value and no realistic chance of profit, the ability to convert investments into cash, and ease of access to the artwork invested in. In many cases, the artwork never existed and/or was almost worthless. There was an intention to defraud.
- Company A was never a legitimate enterprise and its filing history with Companies House shows that what was happening was very different to what was being reported.
- Company A's liquidator has confirmed that there are no records of artwork being purchased/Company A purchased artwork from a connected company/the majority of investor money wasn't used for the stated purpose.
- Company A's accounts were not properly kept.
- Company A was suspended by the Fine Arts Guild.
- Numerous media articles have been published about the scam Company A operated.
- A freezing order was granted on Company A's accounts due to there being a good, arguable case that Company A was fraudulently trading. But Company A has settled

out of court to avoid a trial.

One of our investigators looked into Mr D's case against Barclays but they didn't uphold it. They didn't feel there was enough available evidence to demonstrate that Company A set out to defraud Mr D. Mr D disagreed with the investigator's findings. As the case couldn't be resolved by the investigator, it has been passed to me for a 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.

In deciding what's fair and reasonable, 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 have been good industry practice at the time.

In broad terms, the starting position at law is that a bank like Barclays is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

Here it's not in dispute that the payments to Company A were authorised, so the starting position is that Barclays isn't liable for the transactions.

There are, however, some situations where we believe that firms, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Barclays also has a duty to exercise reasonable skill and care, pay due regard to the interests of its customers and to follow good industry practice to keep customers' accounts safe. This includes looking out for payments which might indicate that a customer is at risk of financial harm.

Barclays was a signatory of the CRM Code, and it was in force when the disputed faster payments were made. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams in all but a limited number of circumstances.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *"another person for what they believed were legitimate purposes but which were in fact fraudulent."*

The CRM Code also explains 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."*

Taking these things into account, I need to decide whether Barclays acted fairly and reasonably in its dealings with Mr D.

In order to reach my decision on this case, I've considered the purpose for which Mr D made, and Company A received, the disputed payments. And, if there is a significant difference in these purposes, whether I can be satisfied that this difference was as a result of dishonest deception.

It's clear that Mr D made the disputed payments in order to purchase artwork. I've not been made aware that Mr D's artwork did not exist or that it wasn't being stored on his behalf. In fact, Mr D appears to have submitted evidence to the contrary. So, to that extent, I'm satisfied that the purpose Mr D and Company A had in mind for the disputed payments was broadly in line.

But, importantly in this case, Mr D's dispute doesn't appear to stem from whether the artwork existed. Instead, Mr D claims that this investment opportunity was in fact fraudulent and that Company A and its connected parties sought to unjustly enrich themselves.

In order to demonstrate this position, Mr D has provided numerous pieces of evidence, and this Service has had sight of other evidence; including, but not limited to, a judgement handed down in relation to the freezing of Company A's accounts and the alleged scam, and numerous affidavits, some of which were submitted to the court for their consideration.

So, I've gone on to consider whether any of the wider circumstances surrounding Company A and Mr D's investments demonstrate that the investments were fraudulent and so Mr D is the victim of an APP scam.

In keeping with our role as an informal dispute resolution service, I will focus on the points I find to be material to the outcome of Mr D's complaint. This is not meant to be a discourtesy to Mr D, and I want to assure him that I have considered everything he has submitted carefully.

Liquidator comments

Mr D points to comments made by the liquidator that reviewed the conduct of Company A in its affidavit submitted to the court as evidence of it acting fraudulently.

Importantly though, the liquidator also comments that there could be legitimate reasons and explanations as to Company A's actions in relation to the concerns they raised. Given the case didn't go to trial, we've no confirmation directly from Company A as to the reasons behind their actions. And, as per the liquidator's comments, Company A may have sought to argue that its actions were not fraudulent or done with the intention of defrauding their investors.

I've also considered that Company A agreed to settle matters outside of court, but that this was done without the admission of any guilt or liability. This means that, as far as I'm aware, Company A hasn't accepted that it acted fraudulently or had intended to defraud its investors. Ultimately, this agreement remains confidential so I don't think it would be fair to draw any conclusion as to whether Company A chose to settle matters outside of court because of any guilt on its part.

The valuation of the artwork

Mr D asserts that the valuation of the artwork purchased from Company A was grossly inflated, meaning that any potential for future profits was highly unlikely. However, the available evidence appears to show that there is some difference of opinion when considering the value of some of the art purchased by Company A's investors.

On the one hand, the liquidator has commented that the value of the art was inflated to such an extent by Company A that it was largely worthless. On the other hand, there is testimony from some of the artists confirming that, while their art is overvalued, it is not so significantly overvalued that it could be said to have been priced fraudulently.

Furthermore, I have to consider the judge's comments that the valuation of the art is something that would need to be determined in a court.

The value of the art is subjective and there is likely to be a difference of opinion when it comes to the valuation of any artwork. Additionally, it isn't uncommon for artwork to be overvalued in some way, albeit not to the extent that it was valued by Company A.

So, whilst I accept that the mark-up in value by Company A may be higher than would generally be seen across the industry, I'm not persuaded that the valuation of the artwork by Company A is enough to demonstrate that it was acting fraudulently.

The secondary market for the sale of the artwork

Company A often bought back their own artwork from investors at a value higher than the price originally paid by investors. It's been alleged that this practice was carried out in order to give the illusion that a secondary market did exist for the artwork and that the investment scheme was operating in the manner originally prescribed.

I accept that the judge's comments and evidence submitted to the court raise questions regarding the conduct of Company A in this regard. I also accept that this may well support a claim for the misrepresentation of Company A and its operations. But it's clear from later comments made by the judge that any such fraudulent activity would need to be considered in a trial; and that it wasn't within the remit of the hearing to make a finding in relation to this.

The judge found there to be a good, arguable case for fraud having occurred. But this test is not the same as the test which is applied in order to demonstrate that Mr D has been the victim of an APP scam.

In order for a freezing order to be granted, the threshold for a good, arguable case is required to be met. The judge makes it clear in their findings that the threshold for a good, arguable case is lower than 50%.

In order for me to be satisfied that Mr D has fallen victim to an APP scam, I need to be satisfied that, on the balance of probabilities, it is more likely than not that Company A set out to intentionally defraud him from the outset. And, as demonstrated above, the judge's comments do not extend to making a finding that it is more likely than not that Company A committed fraud in relation to this matter. Instead, the judge confirmed that this would be a matter for trial.

Other considerations

As referenced earlier in my decision, Barclays has a duty to exercise reasonable skill and care, pay due regard to the interests of its customers and to follow good industry practice to keep customer's accounts safe. That said, Barclays has no obligation to protect its customers from civil disputes.

As I don't believe that Mr D is the victim of an APP scam here; rather, this is a civil matter between Mr D and Company A, I'm satisfied that Barclays hasn't failed in its obligations by not providing any warnings to Mr D or discussing the disputed payments prior to their release. And I'm satisfied that it hasn't made any error in declining to reimburse the disputed faster payments under the provisions of the CRM Code.

Furthermore, even if Barclays had discussed the payments with Mr D, I don't think it ought to have identified that he may be at risk of fraud or financial harm as there didn't appear to be any concerns about Company A's legitimacy at the time the disputed payments were made.

Conclusions

I accept that some of the actions of Company A may be of genuine concern. But, considering all of the evidence available, I'm not satisfied that, on the balance of probabilities, Company A set out with the intention of defrauding Mr D at the time he made the disputed payments. Because of this, I don't think it would be fair or reasonable to require Barclays to reimburse Mr D.

Recovery of funds

Finally, I've thought about whether Barclays ought to have done more to try and recover Mr D's payments. Given my finding that Mr D hasn't fallen to an APP scam here, and the amount of time that passed between the instruction of the disputed payments and the fraud report to Barclays, I'm not persuaded that Barclays could've, or ought to have, taken any action in this respect.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 October 2025.

Kyley Hanson
Ombudsman