

The complaint

Mr and Mrs K complain that Barclays Bank UK PLC did not reimburse the funds they lost to a scam.

What happened

Mr and Mrs K were introduced to an investment opportunity through their son. He knew the director of a company that said it was investing in property development, and he had invested himself already in the company which I will refer to as 'D' for the purposes of this decision. Mr and Mrs K looked into the company themselves and spoke with the directors.

They were satisfied the investment was genuine and so they invested £100,000 in March 2021, and a further £150,000 in March 2022. They received monthly returns from May 2021 to March 2022, but no more after that point. When no more funds were received and they could not withdraw their capital, they felt they had been victims of a scam.

In mid-2022, an individual who had invested with D did not receive their investment capital back, despite obtaining a statutory demand. This resulted in the appointment of an administrator for D in June 2022.

Mr and Mrs K raised a complaint to Barclays via a representative in August 2024. However, Barclays did not think the correct authority had been provided by the representative so they did not open a scam claim, in line with their process.

The complaint was referred to our service and Barclays eventually looked into it. They said no factual evidence had been provided to show what relationship Mr and Mrs K had with the director of D, what checks they carried out on D prior to investing, or what they understood the investment to be. They also highlighted that they provided warnings for the payments relevant to the payment purpose Mr and Mrs K selected when making the transfers.

Our Investigator looked into the complaint and explained that they felt the payments met the bar of an authorised push payment ("APP") scam as set out in the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Overall, they felt there was enough evidence to suggest D was not a legitimate enterprise at the time Mr and Mrs K made their payments. They recommended a full reimbursement of Mr and Mrs K's funds under the CRM Code, as well as 8% simple interest from the date of the declined claim to the date of settlement.

Mr and Mrs K accepted the findings, but Barclays did not. They said this was because they still felt it was a civil dispute between Mr K, Mrs K and D; however they did not provide any additional comments or evidence for us to consider.

As an informal agreement could not be reached, the complaint has been 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.

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 payments here meet the required definition of a scam then Mr and Mrs K 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 K'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 victim of a scam rather than this being a failed or bad investment.

Have Mr and Mrs K 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 isn't in dispute. But what is in dispute is whether Mr and Mrs K's payments meet DS1(2)(a)(ii).

So I've gone on to consider if their intended purpose for the payments was legitimate, whether the intended purposes they and D had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of D.

From what I have seen and what Mr and Mrs K have told us I am satisfied that they made the payments with the intention of investing in property development. 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 if this was a scam or a genuine investment.

The evidence I hold suggests that when D first started, it was involved in property development, although it is not clear if all funds received were used for this purpose. But by the time Mr and Mrs became involved with it in 2021, it was no longer operating in this same way.

From 2019, D's behaviour changed significantly. The beneficiary bank statements do not indicate that D was continuing to purchase many properties after April 2019. The funds coming into the account significantly increased around this time. Large sums were regularly being withdrawn for the benefit of D's directors and other funds were used to pay returns to existing investors. By 2021, D had also links to another company which our Service considers was most likely running a Ponzi forex investment scheme. D's investors funds were being diverted to the accounts with this company, despite it purporting to offer a very different and much higher risk investment than what they had agreed to with D. Further to this, by the time Mr and Mrs K invested, administrators had been appointed due to D not repaying an investor despite the existence of a statutory order to do so.

Our Service is also aware that D's directors and this other company's directors formed a new company together at the same time as D's behaviour changed in 2019. So, this strongly indicates that D was not just choosing to invest some of its investor's funds in a different investment – which would still have issues as explained above. But instead indicates that D and this other company were working together at this time. And as we consider it most likely this other company was operating a scam, this indicates D was too by the time Mr and Mrs K invested.

I can see that Mr and Mrs K did receive returns for the first year of the investment. As set out above, I am aware that some investor's funds were used to pay returns. And it seems to be the case that any returns investors received were likely sent to encourage further investment, either from existing or new investors who were recommended the opportunity from others who had already invested.

From 2019, it does not appear that D used the investor funds for the purpose which they were intended, and so this demonstrates that they were not the legitimate supplier of a service at the time Mr and Mrs K made their payments. D's conduct went beyond simply misleading investors about a genuine investment opportunity and that the real purpose of the payments received was different to what investors were led to believe – and this was through deception on the part of D.

I am satisfied therefore that D was most likely operating a sophisticated scam. I consider it most likely D's purpose for the funds was different to what Mr and Mrs K understood and intended. And that this was because D intended to dishonestly deceive them and took the funds for a fraudulent purpose. As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

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

Barclays has highlighted that Mr and Mrs K have not evidenced they carried out relevant searches or researched D appropriately before deciding to invest. And it has said Mr and Mrs K did not select the most appropriate payment purpose that would have allowed Barclays to provide a relevant and effective warning on the payments.

On Mr and Mrs K's reasonable basis for belief – given that Barclays are still arguing that D was a genuine business who fell on hard times, it would be hard to argue that Mr and Mrs K did not have a reasonable basis for believing that they were investing in a legitimate company. In any event, they had said their own son went to the same school as the director of D and that is how their son initially found out about the opportunity. They confirmed their son invested first and after meeting with the director themselves several times and looking over the website which appeared professional, they decided to go forward with the investment. On balance, I do think they had a reasonable basis for believing D was offering a legitimate investment opportunity.

It is arguable in this case that Barclays couldn't have provided a warning that was effective and would have prevented Mr and Mrs K with going ahead in the circumstances of this particular scam. But this doesn't change Barclays overall position here, as whether any reimbursement is due is then dependent on if any other exceptions apply.

With this in mind, I do not think that Barclays have established that any of the exceptions to the presumption of a full refund under the CRM Code apply here. I am satisfied therefore, that Barclays should refund Mr and Mrs K in full under the provisions of the CRM Code.

I have reviewed the statements for the account Mr and Mrs K received the returns into, and I can see they received a total of 11 instalments of £1250.00, totalling £13,750. The outstanding loss is therefore £236,250.

Putting things right

In order to put things right, I direct Barclays to:

- Refund Mr and Mrs K the loss, less the returns received. The therefore totals £236,250.
- Pay 8% simple interest per annum on this amount from the date their claim was declined under the CRM Code to the date of settlement, less any lawful tax.

As D is going through insolvency proceedings, it is possible Mr and Mrs K 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 Mr and Mrs K's complaint in full and direct Barclays Bank UK PLC to pay the redress outlined above.

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

Rebecca Norris
Ombudsman