

The complaint

Mr S complains that Barclays Bank UK PLC ('Barclays') won't reimburse the funds he lost when he fell victim to a scam.

What happened

Mr S says that he became involved with the directors of a company I'll call D in this decision in March 2021 when they started to look at properties to buy via his company. In September 2021 Mr S received an inheritance and the directors of D mentioned that he could invest in D. Mr S was advised that the money would be invested in a large property portfolio involving long term lets and buying and refurbishing properties to rent out.

In December 2021 Mr S invested £150,000. He made the payment to D by CHAPS in branch. Mr S expected a rate of return of 16% a month for 12 months. He would also receive the return of his investment at the end of the fixed term.

Between January and July 2022 Mr S received returns of £2,000 a month, amounting to £14,000. Administrators were appointed in June 2022 and in August 2022 Mr S received an email from D saying that it would be unable to continue with interest payments

Mr S raised a fraud claim with Barclays through a professional representative in December 2024. He asked Barclays to reimburse him in full and pay interest.

Barclays issued a final response letter saying that Mr S needed to raise a claim with its fraud department and receive an outcome before it could investigate. Barclays went on to say that if Mr S was unhappy with the claim decision, he or his solicitor would need to raise a new complaint.

Mr S raised a claim with this service. He said that D operated a scam and Barclays failed to intervene appropriately on an out of character payment and should reimburse him under the provisions of the Contingent Reimbursement Model Code ('CRM Code').

Our investigation so far

The investigator who considered this complaint recommended that Barclays reimburse £150,000, less returns of £14,000. This was because he felt the CRM Code definition of an APP scam had been met and Barclays couldn't fairly apply any exclusions. He also said that Barclays should have raised a scam claim and considered Mr S's complaint on the strength of the letter of complaint sent by his representative.

Barclays didn't agree with the investigator's findings. It said that it is inappropriate for this service to decide complaints involving D until the conclusion of investigations by the police and/or administrators. Based on current evidence, Barclays say it is unclear whether D's operations were legitimate (but unprofitable) or fraudulent. Barclays also referred to DISP 3.5.4 and said that its ability to provide representations is severely constrained by the fact it hasn't seen evidence this service has relied on, although it appreciates concerns around confidentiality.

After reviewing the complaint, I contacted both parties to clarify the position in respect of interest. I noted that the investigator recommended that Barclays reimburse Mr S from the date Barclays rejected Mr S's claim, but Barclays didn't reject the claim - it said it couldn't investigate it. I said I thought that Barclays should pay interest from 15 business days after

Mr S's complaint letter was sent on 18 December 2024. I calculated this date to be 13 January 2025.

Mr S accepted my revised interest award, but Barclays did not. It said a claim was never raised to review and Mr S was advised he needed to raise a claim directly. Barclays went on to say that it only rejected Mr S's claim when it sent a file to this service in February 2025 and all delays prior to this were caused by Mr S or his representative.

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 there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

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 Payment Services Regulations (PSR's). 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.

Is it appropriate to determine this complaint now?

Barclays didn't consider Mr S's fraud claim because it said he needed to raise it directly, rather than through a letter of complaint from his professional representative. I'm satisfied that Mr S's representative's letter specifically said that Mr S wanted his representative to raise the claim, and appropriate authority was given. If Barclays had further questions, it could have asked.

I have gone on to consider whether it would be appropriate to delay my decision in the interests of fairness, until any police investigation or administrative 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 Mr S'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 he is 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 S first raised his claim with Barclays in December 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 Mr S 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 D's creditors/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 S under those processes in respect of this investment before paying anything I might award to them on this complaint.

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 Mr S under the provisions of the CRM Code.

Has Mr S 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 Mr S's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...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 Mr S is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payment and whether Mr S thought this purpose was legitimate.
- The purpose the recipient (D) had in mind at the time of the payment, and whether this broadly aligned with what Mr S understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr S thought he was investing in property. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

So, I've gone on to consider what purpose D had in mind and whether it was in line with what Mr S thought.

In reaching an answer on what purpose D had in mind, I've considered the wider circumstances surrounding D, and linked companies. The key information is:

- D was a UK incorporated company and traded for a significant period of time before Mr S made the payment. I accept that D appears to have been operating legitimately initially, however I'm satisfied that the evidence supports that it wasn't operating legitimately at the time Mr S made his payment in December 2021.
- This service has received information from the receiving bank, which I can't share due to data protection laws. But this evidence doesn't support that D used Mr S's funds for the intended purpose.
- Evidence shows that D was diverting some funds to a separate company (B), which claimed to be a forex investment scheme. It looks more likely than not that this separate firm was operating an APP scam. It's possible that D was an innocent victim of B, but it's more likely than not that D and B were operating two separate but linked APP scams.
- Mr S believed that D would use his funds to purchase property, refurbish it and then either sell or rent it out for profit. I haven't seen any evidence that supports D had this purpose in mind in obtaining his funds.

Based on the available evidence, I'm satisfied it's more likely than not Mr S's funds weren't used for the intended purpose and that D obtained the funds through dishonest deception. So, I'm satisfied that Mr S's payment meets the definition of an APP scam and is covered by the CRM Code.

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.

Does an exception to reimbursement apply?

The CRM Code says that Mr S 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 Mr S had a reasonable basis for believing D offered a genuine investment opportunity. I say this because when he invested Mr S had a professional relationship with directors of D and spoke to them about the investment opportunity. The directors also said that their own families had invested significant amounts of money and sounded knowledgeable and professional. Mr S checked D's Companies House records and reviewed D's website. When he made the payment, Mr S was required to sign a contract.

I haven't seen any evidence that suggests there were warning signs that D wasn't offering a genuine investment when Mr S made his payment. 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 Mr S made the payment 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, Mr S is entitled to be reimbursed under the CRM Code.

I've considered whether Barclays could have uncovered the scam at the time the CHAPS payment was made in branch. The relevance of this point is that interest would be payable from the date of payment if I thought this was the case. But I don't think there was any information in the public domain at the time of payment that ought reasonably to have concerned Barclays or led it to refuse to carry out Mr S's payment instructions.

I'm satisfied that Barclays should pay interest from 15 business days after Mr S's complaint letter was sent on 18 December 2024. This is the timeframe that the CRM Code sets out for a firm to make the decision as to whether to reimburse a customer. There was enough information available at that stage to have allowed Barclays to carry out an assessment and verify any information it needed to, and to reimburse Mr S under the CRM Code. So, I think interest should be paid from 15 business days after Mr S's complaint letter was sent on 18 December 2024.

Putting things right

Overall, I'm satisfied Mr S was the victim of an APP scam as set out in the CRM Code and should be reimbursed as set out below.

My final decision

For the reasons stated I uphold this complaint and require Barclays Bank UK PLC to:

- Pay Mr S £136,000; and
- Pay interest on the above amount at the rate of 8% simple per year from 13 January 2025.

As there is an ongoing investigation by administrators, it's possible Mr S may 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 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 Mr S for his consideration and agreement.

If Barclays Bank UK PLC is legally required to deduct tax from the interest it should send Mr S a tax deduction certificate so that he can claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 January 2026.

Jay Hadfield
Ombudsman