DRN-5729315

## The complaint

Mr J and Mr D, as the directors of a limited company Y, complain that Barclays Bank UK PLC ("Barclays") won't refund money that Y lost to an investment scam.

## What happened

In May 2021, following an introduction by a financial advisor they'd known for many years, the directors of Y made a payment of £20,000 from the company's Barclays account in connection with an investment opportunity with a company "P". The proposed investment was for Y to loan funds to P, a lighting technology company based in the UK, for a project in return for acquisition of shares in P. The project was to provide proprietary plasma lighting for the cultivation of cannabis on a site in an overseas jurisdiction that P had leased.

The directors of Y understood that P would repay the loan after a minimum term of 12 months. Future dividends would be paid to Y subject to required revenues being realised by the project and repayment of investor loans. Before deciding to invest, the directors reviewed the documentation they'd received. They also researched P, as well as its main director – I'll refer to him as "N". Y's directors say the individual who introduced them to P had already invested in the project and was looking to invest further sums. The individual had also spent time with N and visited P's factory in the UK where proprietary lighting was to be built. The directors say they felt confident that P was a bona fide company.

In 2022, Y's initial investment wasn't returned, and dividends didn't materialise. It received correspondence from N that the company was being sold, and the new owners would repay the investors. There was no progress and, in late 2022, other investors started looking into P. This included the individual who had introduced the directors to P, who had visited the overseas site only to discover that there was no functional facility as N had claimed. Around the same time, the police also launched an investigation into P. P subsequently went into liquidation.

Y's directors contacted Barclays in November 2022 and made a scam claim. It attempted to recover the funds from the beneficiary bank but was unsuccessful. Barclays didn't give an outcome to Y's claim, and when the directors complained in 2023 the bank said it couldn't give an outcome as it was still investigating.

Unhappy with this response, the directors referred the complaint to our service. One of our investigators looked into things and concluded that based on the information provided by the parties to the dispute and relevant third parties, Y had been the victim to an authorised push payment (APP) scam as defined under the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code). They recommended that Barclays reimburse Y in full along with interest.

The directors accepted the investigator's findings, but Barclays said it didn't accept that this matter could be classed as a scam given the lack of criminal evidence. It said the case against P hadn't been presented to the Crown Prosecution Service. The bank also said that Y's case should remain ringfenced until the police investigation into P concludes.

Barclays also referred to a court judgement relating to P from a case in 2021 and said that there was nothing in it which suggested the company was operating fraudulent. The bank said it therefore considered it reasonable and fair assumption that P was genuine but later failed.

I issued my provisional decision last month and gave further reasoning for why I intended reaching the same overall outcome as the investigator. I said:

> *"When considering what's fair and reasonable, I'm 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 firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs) and the terms and conditions of the customer's account. 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*
>
> *The CRM Code was a voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. Barclays was a signatory to the CRM 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 payment in question, on the balance of probabilities, meets the CRM Code's*
> *definition of an APP scam.*
>
> *An "APP scam" is defined in the Definitions and Scope section of the CRM Code, at section DS1(2)(a), as:*
>
> > *"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."*
>
> *DS2(2) of the CRM Code says:*
>
> > *This Code does not apply to:*
> >
> > *…*
> >
> > *(b) private civil disputes, such as where the 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;"*

*The CRM Code doesn't provide a definition for "fraudulent" purposes. Therefore, it ought to get its natural meaning in the context in which it is being used. Having thought carefully about that, I'm satisfied that the CRM Code is intended for customers to be reimbursed where they have been dishonestly deceived as to the purpose for which their payment was being obtained.*

*Section DS2(2) makes it clear that "private civil disputes" between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. This shows that a dispute which could only be pursued in the civil courts as a private claim isn't an APP Scam. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.*

*That doesn't mean that a person or microenterprise claiming reimbursement under the CRM Code needs to meet the criminal standard of proof ("beyond reasonable doubt"). Indeed, I understand that the CRM Code's publisher, the Lending Standards Board (LSB), has provided guidance that the criminal standard isn't required. In line with the general approach taken by 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.*

*However, at the heart of the CRM Code is the requirement for the customer to have been the victim of fraud. And so, I would need to see evidence that convinces me, it's more likely than not, that a criminal fraud has occurred, and therefore that Y has lost this money to an APP scam.*

*If I conclude, on the balance of probabilities, that the payment in question meets the definition of an APP scam, as defined above, then Y would be entitled to reimbursement unless Barclays is able to show that any of the CRM Code's exceptions at section R2(1) apply.*

*<u>Can Barclays delay making a decision under the CRM Code?</u>*

*The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.*

*In its final response letter, Barclays said it was unable to review Y's claim as investigations were still ongoing. In its file submission to our service, the bank said it was awaiting guidance from an industry trade body on how to address payments made to P. In response to the investigator's assessment, Barclays said the police investigation into P is still ongoing and to date no one has been charged with any offence. It asked that our service awaits the outcome of the investigation before determining the complaint.*

*Based on its most response, it seems that Barclays considers R3(1)(c) applies in this case.*

*While this exception provides a reason why firms may delay providing a claim outcome under the CRM Code, it doesn't impact that customer's right to refer the complaint to our service – and similarly it doesn't impact our service's ability to provide a complaint outcome when we consider we have sufficient evidence to do so. I've therefore considered whether we do have sufficient evidence to proceed at this time on Y's complaint.*

*Is it appropriate to determine this complaint now?*

*I understand that the police investigation is still on-going although its progress is unknown. Also, P is currently in liquidation, and I understand that the liquidator's enquiries are continuing.*

*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 based on evidence already available. And it may be that 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 of 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, 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 this complaint, I must ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Y was 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 Y first raised this claim with Barclays in November 2022, and I need to bear in mind that this service is required to determine complaints quickly and with minimum formality. With that in mind, I don't think delaying giving an answer for an unspecified length of time would be appropriate unless the delay is truly required for the sake of fairness to both parties. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.*

*I'm also aware that P is under liquidation. This might result in some recoveries for P's creditors, or even theoretically its shareholders. It's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive if there are secured creditors, given recoveries would initially be for any secured creditors. That said, 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 Y under the liquidation process in respect of this £20,000 investment before paying anything I might award to Y on this complaint.*

*For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of a statutory body investigation for me fairly to reach a decision on whether Barclays should reimburse Y under the provisions of the CRM Code.*

*Has Y been the victim of an APP scam, as defined in the CRM Code?*

*As referenced above, Barclays was a signatory to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).*

*The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a payment made for a genuine investment that subsequently failed.*

*As there's no dispute that Y's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, the directors of Y must have transferred funds to P for what they believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).*

*I've therefore considered whether or not Y's intended purpose for the payment was legitimate, whether or not the intended purposes of Y and P were substantially aligned and, if not, whether or not this was the result of dishonest deception on the part of P.*

*Y lent a sum of money to P in May 2021 which its directors believed would be used for funding the project. They understood this loan would be repaid after a fixed period. The directors also understood that Y had acquired shares in P and would receive dividends in the short term if certain conditions were met. The directors have said that they reviewed the investment material and satisfied themselves about P's credentials before deciding to invest Y's funds. They also discussed this opportunity with other investors who they say had carried out similar checks.*

*I've then considered whether there's convincing evidence to demonstrate that P's purpose of the payment was fraudulent. That is, whether P's purpose must have been to misappropriate Y's funds or otherwise deprive it of this money, rather than to use it for the purpose believed by Y's directors.*

*Our service contacted the police force investigating the matter as well as the liquidator overseeing P's and associated companies' liquidation. Although attempts to obtain further information from the police were unsuccessful, the liquidator shared their preliminary findings from investigations to date. We've also had confirmation from the liquidator that their findings can be disclosed in my decision as far as they are relevant to the complaint.*

*I've carefully reviewed the liquidator's findings. The following observations they've made are of particular relevance to this complaint:*

- *following P's incorporation in September 2017, while an undischarged bankrupt, N acted as a de facto director of P and promoted the company as a successor to another company he used to be a director of before it went into liquidation. N was appointed a director of P in June 2018, prior to his discharge from bankruptcy. As an undischarged bankrupt, N was prevented from being involved in the formation or management of any company.*
- *Between September 2017 and July 2018, when N was an undischarged bankrupt, nearly 34% of the investor's money was drawn out by him via another company he was a director of, or to his personal account, or otherwise applied towards lifestyle spend.*
- *Between March 2018 and July 2019, N made rental payments every month in respect of the property he and his family were living in. And between September 2018 and September 2019, nearly 32% of investments into P were applied towards purchasing that property.*
- *Between January 2020 and April 2020, repayments to investors were made which were drawn from new investor funds. The pattern of using new investor funds to repay historic investors continued subsequently.*

*Given the substantial size of these payments, the fact that they preceded Y's investment, and N's misconduct as a bankrupt, I consider this is powerful evidence that P's true role was to dishonestly raise money from investors to fund N's lifestyle and make repayments to earlier investors.*

*Another investor, who has since also brought a complaint to our service, has provided an email they received from one of the former directors of the company which was contracted to grow medicinal cannabis in the overseas jurisdiction. I note that the director has said his company had significant funding problems with P, from as early as November 2019. The email goes on to say that by that point, his company had used all its capital and had committed $2.5 million. It no longer controlled the land and had difficulties raising additional funds. Although P promised to lend it $1 million, that funding never arrived. The site was left in a state of disrepair, and the director's company in ruins. The director concludes the email by saying he believes that P was set up as an investment fraud, given the initial contract signed by both parties for the project was never funded.*

*A review of bank statements of P's account from the relevant time supports the director's claim that the promised sum wasn't sent. From what I've seen, I can only identify around £83,000 being sent to the company during the relevant period. This leads me to conclude that P had no intention – by the time of Y's payment – to fulfil its obligations to the contracted company in relation to the project, and therefore it also had no intention to use Y's funds as it had led its directors to believe it would. Instead, based on what the liquidator has noted, it appears that Y's funds were used largely for N's personal benefit and repayments to earlier investors.*

*Our service has also seen an email from the general manager of the company that P engaged with in 2018 to carry out construction at the overseas site. The email states that the said company experienced multiple delays in receiving payments, and in early 2021 it was asked to stop all work immediately and leave the site. At the time, construction hadn't finished, and the site didn't have electricity or water. The general manager also states that to his knowledge, the site has never had any grow lights installed, nor grown cannabis.*

*The email from the former director of the company which was contracted to grow medicinal cannabis corroborates that evidence, stating that lighting was never provided nor cannabis grown on the site.*

*The information provided by the third parties which I've mentioned above is completely at odds with the letter P sent to shareholders in November 2021 which included 'sensitive' images of the 'up and running' facility, one of which purported to show the cannabis flower cultivation grow room. One of the investors has alleged that these images were taken from third-party websites. I've reviewed the website links the investor claims the images were taken from and I find that they do support this allegation. While P's newsletter was written after Y's investment, I do consider it relevant to the extent that it provides evidence of P's willingness to deceive investors about the use of their funding.*

*Further (again subsequent) evidence of N's dishonest business practices has been provided to me. I understand that in November 2021, P agreed to make a payment of £2.5 million to another company for the deal it had entered into – to supply P's proprietary lighting in return for a percentage of that company's revenue. When the funds didn't arrive, N claimed to have sent the payment and provided a screen shot of the payment confirmation to evidence this. I've seen a copy of the payment confirmation screen. I've also reviewed the bank statements of the account that this money was alleged to have been sent from. Having done so, I can't see the payment in question leaving the account.*

*Moreover, the account balance on the day in question stood at around £80,000. So, it's unclear how P could have made a payment of £2.5 million. I've seen an email from the police to one of the investors where they have confirmed that none of the accounts held by P, connected companies, or N, had a balance that could have cleared that payment. I consider that this evidence supports a conclusion that N and P were more than capable of the level of dishonesty required for an APP scam such as the one the directors of Y believe it fell victim to.*

*The police have also said that they can see very little of the funds received from investors being invested back into the company; most of it was spent on N and his family's lifestyle.*

*Overall, after having carefully considered the information available, and given the findings I've made above, I'm persuaded that P's purpose was not aligned with what the directors believed when they made the payment from Y's account in May 2021. They made the payment believing its purpose was to fund the cannabis cultivation project, whereas, in truth, P had the dishonest intention of diverting a substantial part of the money to support N's lifestyle, repay earlier investors, and, as and when necessary, deceiving investors that P was establishing and conducting viable business operations.*

*Barclays has referred to a 2021 court judgement relating to P which it says doesn't contain anything that suggests P was operating fraudulently. But the matters considered in that judgement aren't the same as what I'm considering in this case. Also, it seems to me that the judge dismissed that case on grounds of technicality.*

*Given the observations I've made in relation to P and N, I think the circumstances here meet the definition of an APP scam as set out under the CRM Code.*

*Returning to the question of whether in fairness I should delay reaching a decision pending developments in the liquidation or police enquiries, I've 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. The liquidators have already expressed their views. And as regards the police's investigations, there's no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.*

*It is for these same reasons that, despite Barclays inviting me to, I don't consider it appropriate to use my discretion – as I'm allowed to under our rules – to dismiss this complaint without considering its merits.*

*Is Y entitled to a refund under the CRM code?*

*Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an APP scam, like Y. The circumstances in which 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 sets out those exceptions and stipulates that the assessment of whether they can be established should involve consideration of whether they would have had a material effect on preventing the APP scam that took place.*

*Section R2(1) of the CRM Code states that a firm may choose not to reimburse a customer if it can be established that the customer ignored effective warnings given by a firm.*

*It also states that a firm may choose not to reimburse a customer if it can establish that, in all the circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the payments without 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.*

*Also, where the customer is a microenterprise, a firm may choose not to reimburse if the microenterprise didn't follow its own internal procedures for approval of payments, and those procedures would have been effective in preventing the APP scam.*

*There are further exceptions within the CRM Code, but they're not relevant to the facts in this case.*

*Although Barclays hasn't established that any of the above exceptions apply, for completeness I find that none which could be relevant apply in this case. I'll explain why.*

*The bank says the following warning would have been displayed when the payment was made from Y's account:*

> *"**Stop. Could this be a scam?***

> ***Fraudsters fake documents and websites to look like genuine organisations, and post adverts on social media.***
>
> *If an offer sounds too good to be true, it probably is. Speak to a financial advisor before proceeding.*
>
> *Search the FCA register and use the ScamSmart tool to check the company is certified and regulated. If they are, verify their account details over the phone. Use a number from a trusted source such as an official website."*

*Barclays hasn't provided any technical evidence that confirms the above warning was provided at the time of the payment. But for completeness, I've reviewed the warning the bank says the directors would have seen at the time. Having done so, I don't think the warning was sufficiently impactful or specific to the situation as required under the CRM Code. In any event, the directors of Y have said that they did discuss this opportunity with a financial adviser. And they did verify the account details before making the payment. So, I can't fairly say that Y's directors ignored an effective warning.*

*Thinking next about the directors' reasonable basis for belief, the investment material I've reviewed appears professional, and there was nothing in the public domain at the time about P from which they could have reasonably inferred that a scam was taking place. Moreover, the investment literature made it clear that returns weren't guaranteed. I consider this would have made the investment appear genuine and would likely have alleviated any concerns the directors might have had about the projected returns.*

*The directors of Y have said that they were introduced to P by a known and trusted local financial adviser who they'd both known personally for a number of years. The directors say the individual had previously introduced business to them and vice versa. This individual had visited P's site in the UK before investing themself. The directors of Y had also carried out checks on P through Companies House and other business checking websites. So, I don't think there was anything about the investment at the time of this payment that should have given the directors cause for concern.*

*Overall, as I don't think Barclays has established that any of the exceptions to reimbursement under the CRM Code apply here, it should refund the money Y lost in full.*

***Putting things right***

*Outside the provisions of the CRM Code, I consider it unlikely that any intervention by Barclays at the time of the payment would have positively impacted the directors' decision-making. I don't think either party would have likely uncovered sufficient cause for concern about P such that the directors of Y would have chosen not to proceed. To be clear, I'm not making a finding that Barclays should have intervened at the time of the payment.*

*I've thought carefully about whether interest should be added to the refund Y is due from Barclays. Having considered the available information, including submissions from third parties which I consider Barclays could have obtained if it wanted to when it received Y's claim, I think the bank should have reimbursed Y when it received a claim under the Code.*

*Ordinarily, I would consider awarding interest from the date a firm rejects the scam claim. Here, Barclays didn't give an outcome to the claim, and it wasn't until the directors of Y complained that it said it couldn't give an outcome. I can see from the bank's submissions that it acknowledges it didn't keep Y informed. In the circumstances, I think it would be fair and reasonable that interest is paid from 15 days after Barclays received the claim. This is to account for the time allowed to under the Code to make a decision."*

I gave both parties an opportunity to provide any further comments or evidence for my consideration.

The directors of Y replied and said they accepted my provisional decision and didn't have anything else to add.

Barclays said it didn't accept that this matter, based on available evidence, amounts to a scam. The bank says it notes the investigation is ongoing and no one at P has been charged with any offence. It says the case hasn't been presented to the Crown Prosecution Service. Barclays has asked that I await the outcome of the police investigation and consider the 2021 judgement (which it has previously referred to) before determining the complaint. Alternatively, the bank invites me to dismiss the complaint under our rules on the basis that dealing with such a type of complaint while an investigation is ongoing would seriously impair the effective operation of the Financial Ombudsman Service.

**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.

I thank both parties for responding to my provisional decision promptly.

I note that Barclays's response is identical to the appeal it submitted in reply to the investigator's assessment. As such, it's naturally disappointing that the bank hasn't engaged with the additional reasoning I gave in my provisional decision for why I've reached the same overall outcome as the investigator.

As I've already taken account of the comments Barclays has re-submitted, there's no material new information for me to consider. So, I see no reason to depart from the outcome reached in my provisional decision.

**Putting things right**

Barclays Bank UK PLC needs to:

- refund Y the disputed payment of £20,000 made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded, calculated from 15 days after the bank received Y's claim until the date of settlement.

As P is now in liquidation, it's possible that Y 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 process in respect of this £20,000 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 Y for its consideration and agreement.

## My final decision

For the reasons given, my final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the directors of Y to accept or reject my decision before 29 August 2025.

Gagandeep Singh
**Ombudsman**