

The complaint

Mr and Mrs H complain Barclays Bank UK PLC trading as Barclays won't reimburse money lost to an investment scam.

Mr and Mrs H are being represented in their complaint.

What happened

Mr and Mrs H met some partners – which I'll refer to as "B"- at a property course. They were presented with an investment opportunity whereby B would invest their money into forex trading. Between March 2020 and July 2021, Mr and Mrs H invested £210,000 with B. The money was either lent to B, via loan agreements, for general investment purposes on which it would pay 40% interest, or Mr and Mrs H entered into management fund agreements where it was understood that money would be invested on their behalf.

Towards the end of 2022, Mr and Mrs H began to have suspicions when B were not forthcoming with an investment plan for the following year. B were later placed into administration.

Mr and Mrs H complained via their representative but as they hadn't raised a scam claim previously, their complaint wasn't investigated at that time. And it was on receiving the business file for this complaint, that Barclays argued this matter was a civil dispute and so Mr and Mrs H weren't due reimbursement.

Our investigator upheld the complaint as she was satisfied Mr and Mrs H had likely fallen victim to a scam, and so they were due full reimbursement under the Contingent Reimbursement Model (CRM). Barclays didn't respond to the assessment and confirmed it had no further comments when notified the matter was being referred to an ombudsman.

As the matter couldn't be resolved informally by the investigator, it has been referred 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 deciding what is fair and reasonable, I am required to take into account: relevant law and regulations' regulatory rules, guidance and standard; codes of practice and where appropriate what I consider to have been good industry practice.

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 relevant regulations and terms and conditions of a customer's account. However, where the customer made the payment as a result of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even if they authorised the payment.

Of particular relevance here is the CRM. This set out that in certain circumstances customers of signatories would be entitled to reimbursement of losses that had resulted from an APP scam. The CRM Code took effect from 29 May 2019 and Barclays was a signatory to it.

Mr and Mrs H's payments to the alleged scam were made between March 2020 and July 2021, after the CRM Code came into effect. The issue I need to decide, is whether Mr and Mrs H have been the victim of an APP scam such that it was unfair for Barclays to decline to reimburse their losses as a result of their investments into B.

At Section R1, the CRM Code says:

Subject to R2, when a Customer has been the victim of an APP Scam Firms should reimburse the Customer.

For the purposes of this complaint, it's the definition of an APP scam in the CRM Code which is applicable.

Section DS1(2)(a) of the CRM, defines this 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 [Payment Services Regulations], where

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring funds to a different person; or
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but 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;

There has been no allegation that Mr and Mrs H were deceived into sending funds to a different person to the person they intended to pay – as you might see, for example, with an intercept scam. Therefore DS1(2)(a)(i) isn't applicable to my consideration.

I have therefore considered DS1(2)(a)(ii) in order to determine whether Mr and Mrs H should be reimbursed under the Code. The issue is whether Mr and Mrs H transferred funds to B for what they believed were legitimate purposes but were in fact fraudulent.

From what Mr and Mrs H have explained, I'm satisfied they believed the investment opportunity to be a legitimate one. So, I have considered whether the purposes for which B obtained the money was different to what Mr and Mrs H understood, and whether that difference was due to dishonest deception – that is, the money was criminally obtained by B.

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still ongoing. I also understand that the liquidator's/administrator'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 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 maximizing 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 and Mrs H'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 they were 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 and Mrs H first raised their complaint with Barclays in 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 them 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 B'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 and Mrs H 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 the outcome of investigations for me fairly to reach a decision on whether Barclays should reimburse Mr and Mrs H under the provisions of the CRM Code.

Have Mr and Mrs H been the victim of an APP scam, as defined in the CRM Code?

This case is fairly complex. People who invested with B did so in three different ways. There were investments via a loan agreement, a managed account agreement or PAMM account with a foreign trading platform. According to the administrative process, overall around £28 million was invested with B.

We have seen evidence that investors whose money was invested through the PAMM account, did have their money forex traded. These investments amounted to about £4.7 million. Although that money was lost, to what appears to be poor trading choices (as can

happen with these investments), the money was nevertheless traded, through accounts held in their own name (as opposed to being in the name of B). I'm not of the view that any of these investments amounted to a scam - the money was traded. And although returns amounted to about £4.1 million, overall, that meant the trades incurred a loss of £0.6 million.

But that isn't the same for money invested through the loan agreement or the managed agreement. Information from the administrative process, contained within the complaint itself, suggests the only money traded was that via the aforementioned foreign trading platform. This is supported by what we have seen from the beneficiary statements we were provided with (I should be clear here that we didn't obtain all the statements requested and some were redacted for reasons of confidentiality).

For those who invested via the loan agreement, or the managed account agreement, money was paid into various accounts either held by the partners (who later became directors when B was incorporated) or parties acting on their behalf, such as accountants. We've not seen any evidence that money invested through these agreements was traded. Rather, it was paid to B, its directors, other companies associated with B, sent abroad and as returns to investors. This supports quotes from those involved in the administrative process and what they've seen, a large proportion – we understand in the region of £19million - was repaid immediately to investors as returns.

As B wasn't in the business of trading the money received through the loan or management agreements, yet money was being paid back to investors as returns, this was highly likely to be a Ponzi Scheme; there was no genuine trading activity taking place through which returns could be obtained.

It also appears B misled investors about the need to be authorised by the Financial Conduct Authority (FCA). It said in the managed fund agreement that this was a 'Private Investment Fund' as and such clients acknowledge and accept its not subject to the regulations of the FCA. However, Mr and Mrs H as general members of the public, were retail investors, and as such shouldn't have been the target market for such an investment, if it was indeed a Private Investment Fund. Furthermore, it's our understanding, given Mr and Mrs H's status as retail investors, that B ought to have been authorised when it wasn't.

Overall, given the evidence available, I'm satisfied on balance, that this meets the definition of an APP scam under the CRM.

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. I have already seen evidence that persuades me this was most likely an APP scam. The liquidators/administrators have already provided information about what they have seen, and there is no certainty any police investigation will result in a prosecution, nor what, if any new light that would shed on the evidence and the issues I have referred to.

Putting things right

As I am satisfied Mr and Mrs H have lost money to an APP scam, their loss is reimbursable under the CRM. Barclays has not argued that any of the exemptions to reimbursement ought to apply – such as Mr and Mrs H ignoring an effective warning, or that they didn't have a reasonable basis for belief in the opportunity.

I have nevertheless considered whether they had a reasonable basis for belief. Given how

they came by the opportunity, via a property training course, had met the founding partners and saw a demonstration of the trading, this would have made the proposition attractive to them. And they were shown other investors receiving returns which would have given them reassurance that this was successful. Although they understood investment does carry some risk, they aren't sophisticated investors and considered fairly high returns could be typical. Overall, I'm satisfied they had a reasonable basis for belief.

Mr and Mrs H did withdraw £16,000 from the investment. This means their overall loss is £194,000. I require Barclays to:

- Reimburse Mr and Mrs H £194,000 to their respective accounts; and
- Add 8% simple interest to that sum from the date they declined to invest to the date of settlement.

As there are ongoing investigations, it's possible Mr and Mrs H 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 and/or law enforcement 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 and Mrs H for their consideration and agreement.

My final decision

For the reasons given I above, my final decision is I uphold this complaint. I require Barclays Bank UK PLC trading as Barclays to pay redress to Mr and Mrs H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 6 October 2025.

Claire Hopkins

Ombudsman