DRN-5816414

## The complaint

Miss T complains that Barclays Bank UK PLC ('Barclays') declined to reimburse her £15,000, which she says she lost as a result of a scam.

## What happened

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, Miss T came across an investment opportunity with a company which I will call 'B'. Her ex-partner and some family members had already invested in B and had received returns. She understood it was a private fund which used an algorithm to trade in the financial markets. She looked into the company online, and reviewed their professional brochures and other documentation. She spoke with the directors of B, and attended on online meeting with them, existing investors and other potential investors. Persuaded to invest, Miss T sent four payments in September 2020 which came to £30,000 from her Barclays account.

In April 2022, Miss T successfully withdrew £15,000 from her investment. She later tried to withdraw more funds, and when she was unable to she said she realised she had fallen victim to a scam. She later received an email which said that the directors had disappeared and B had gone into liquidation. Miss T complained to Barclays, and asked it to reimburse her losses.

Barclays did not reimburse Miss T her losses. It said that it deemed the matter to be a civil dispute, rather than a scam. It pointed to the fact she had managed to withdraw £15,000 of her returns. It also said that Miss T paid a third party beneficiary which was then invested into B. It said that B was a genuine company which went into administration, and a police investigation had started but was still ongoing, so it was not possible to confirm that there was an intent to scam Miss T.

Miss T remained dissatisfied, so she escalated her concerns to our service. One of our investigators looked into what had happened and recommended that Miss T's complaint should be upheld. They said that they were satisfied this amounted to a scam, and under the provisions of the Lending Standard Board's Contingent Reimbursement Model ('CRM') Code, Barclays were liable to reimburse her remaining losses in full, along with 8% simple interest, calculated from the date of Barclays' initial decision not to reimburse her, to the date of settlement.

Barclays did not accept out investigator's recommendations. As no agreement could be reached, the case has been passed to me to decide.

## 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 payments in dispute were 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 payment here meets the required definition of a scam then Miss T 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 Miss T'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 she was the victim of a scam rather than this being a failed or bad investment.

*Has Miss T been the victim 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 is not in dispute. But what is in dispute is whether Miss T's payments meet DS1(2)(a)(ii). So I have gone on to consider if her intended purpose for the payments was legitimate, whether the intended purposes she and B 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 Miss T has told us, I am satisfied that she made the payments with the intention of investing. I have not seen anything to suggest that she 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 whether this was a scam or a genuine investment.

The evidence I hold suggest that B was operating as a genuine forex trading investment opportunity at one point – it invested nearly £5,000,000 of investors' funds with a legitimate forex trading platform authorised and regulated in another jurisdiction, and for a number of years investors received returns which were often substantial.

I also understand that the police investigation, at last update, was continuing to investigate B, but no charges have been brought that I am aware of, against those individuals responsible for B.

However, by the time Miss T made the payments to B, I am not satisfied that it was operating a legitimate enterprise. There is compelling evidence which establishes that investors were dishonestly deceived about the purpose of the payments they were sending to B. And so it follows that I am persuaded that Miss T's payments to B meet the definition of an APP scam under the CRM Code, rather than a mere civil dispute. I will explain why.

B was not authorised by the FCA. It would have needed to be regulated by the FCA to take part in the activity it was alleging to be engaged in. Private investment funds do not solicit investments from the general public or retail investors, which is what B were doing here. So I am persuaded that B misled investors over regulatory requirements for the activities it was said to be undertaking, and I have seen this in writing in its managed account agreements.

Reviewing the evidence our service has received, it appears that B received approximately £28,000,000 from individual or business investors. But only £4,700,000 looks to have been used for the intended purpose of forex trading – less than 17% of the investment capital received. They made returns of roughly £4,100,000 – indicating that there was a trading loss of £600,000. Regardless of the fact that less than 17% of investment capital was traded, which resulted in a loss, roughly £19,000,000 was paid out to investors. This amounted to almost 68% of the investment capital received. The leftover funds were not traded – but instead appear to have been withdrawn to accounts linked to B or its associates.

B offered either loan agreements or managed account agreements – with returns of capital and 15-40% interest promised for the former, and a return of at least 48% for the latter. Miss T had a loan agreement with B. There is no available evidence to suggest that B could substantiate the rate of returns their investors were expecting. Nor is there evidence that B were trading forex or otherwise investing successfully and generating the profits they claimed to be generating.

So, I am of the opinion that B were not using investor funds for the purpose in which they were understood or intended by Miss T, and this shows that it is more likely than not that they were not a 'legitimate supplier' of the investment services they claimed to be. I do think that the evidence suggests that their conduct went beyond misleading investors about a legitimate investment opportunity, and that the real purpose of the payments received was different to what Miss T and other investors were led to believe – and this was done through deception.

I have considered the fact that Miss T received returns. But it appears that any returns that

investors received were likely sent to encourage further investment. This further investment would either be from existing or new investors who were recommended the opportunity from others who had already invested – as Miss T's acquaintances had recommended B to her after they had received returns. So, even if any of Miss T's money was used to trade forex, or otherwise invest or trade, it was likely with the intention of encouraging more investment as part of an overall scam.

So, having considered everything, I am persuaded that B was more likely than not, operating a sophisticated APP scam. I have also considered the fact that the payment went to a third party account – but this is one of numerous receiving accounts used for B, so this does not impact my findings. I am satisfied that Miss T's payments to B meets the definition contained within the CRM Code. And so it follows that Barclays cannot fairly refuse to consider refunding Miss T under the provisions of the CRM Code on the basis that it amounted to a private civil dispute. So, I have gone on to consider whether Miss T should be reimbursed under the CRM Code.

*Is Miss T 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 Miss T. 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 might be when a customer has ignored an effective warning. A second circumstance in which a bank might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

Barclays told our service that none of the payments flagged on their fraud detection system, and have not said that any warning was provided. So, I do not think it would be fair or reasonable for Barclays to apply this exemption to reimbursement here.

I also do not think it would be fair or reasonable for Barclays to rely on the exemption to reimbursement that Miss T sent the funds without a reasonable basis for belief that she was sending them to a legitimate investment. Miss T was introduced to the investment by known and trusted acquaintances, who had themselves received returns and successfully withdrawn them. She spoke with and virtually met with the directors of B, which would have added to the sense this was a legitimate venture. B provided her with professional and legitimate appearing documentation, including contracts. When she researched B, she did not find any concerning information. So, considering all of this, I think that she did act with a reasonable basis for belief that her funds were going to a legitimate investment.

So, as I do not think it would be fair or reasonable for Barclays to rely on any exceptions to reimbursement, it follows that they should reimburse her remaining losses in full.

**Putting things right**

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

- Reimburse the remaining £15,000 loss;
- Pay 8% simple interest from the date they declined to reimburse her under the CRM Code, to the date of settlement.

As B is going through insolvency proceedings, it is possible Miss T 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 this complaint and require Barclays Bank UK PLC to reimburse Miss T in line with what I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 9 January 2026.

Katherine Jones
**Ombudsman**