

The complaint

Mr A and Ms I complain that Barclays Bank UK PLC ('Barclays') hasn't refunded the money they believe they lost to an authorised push payment ('APP') investment scam.

What happened

The circumstances of the complaint are well-known to both parties. So, I don't intend to set these out in detail here. However, I'll provide a brief summary of what's happened.

In May 2024, Mr A entered into an investment agreement with a company which I'll refer to as 'Company G'. To partially fund the investment, Mr A sent £48,779 from his and Ms I's joint account with Barclays.

In July 2024, Mr A decided to invest with Company G again. To partially fund the investment, Mr A sent £40,720 from his and Ms I's joint account with Barclays.

Mr A also sent funds to both investments from a separate sole account in his name (also held with Barclays). However, this complaint focuses solely on the payments Mr A made from his and Ms I's joint account, totalling £89,499.

In June, July and August 2024, Mr A received £3,055.85 from Company G into his sole account with Barclays. However, he didn't receive any further funds and in September 2024, Company G entered administration, leaving Mr A and Ms I with a loss of £89,499.

Mr A was concerned that Company G had scammed him and so he complained to Barclays and asked for his loss to be refunded. Barclays considered Mr A's claim but decided not to reimburse him. Barclays considered the situation was a private civil dispute between Mr A and Company G and not an APP scam, which meant Barclays wasn't responsible for Mr A and Ms I's loss.

Unhappy with Barclays' response, Mr A referred his complaint to this service. Our Investigator considered the complaint and recommended it be upheld. In summary they were satisfied that Mr A had, more likely than not, been the victim of an APP scam and in those circumstances, Barclays should refund the loss with interest.

Barclays didn't agree with our Investigator. It said it didn't think there was sufficient evidence to demonstrate an APP scam had taken place. Also, as there were external investigations ongoing by Company G's joint administrators and the police, Barclays said it would be more appropriate for this service to dismiss this complaint rather than decide the merits.

As an agreement couldn't be reached, the complaint 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.

I've first considered Barclays' comments that Mr A's complaint ought to be dismissed, and I don't agree. I'm satisfied that there is enough persuasive evidence currently available to reach a fair outcome on this complaint and doing so would not seriously impair the effective operation of this service as Barclays has argued.

I'm very aware that Company G is in administration and the joint administrators' investigation is ongoing, as is an active police investigation. There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. 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.

In order to determine this complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr A was the victim of an APP 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 A first raised this situation with Barclays in October 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 A and Ms I 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 also aware that the investigations by the joint administrators and police might result in some recoveries for Company G's investors – including Mr A. In order to avoid the risk of double recovery, I think Barclays would be able to take, if it wishes, an assignment of the rights to all future distributions to Mr A under those processes in respect of these investments before paying anything I might award Mr A and Ms I on this complaint.

For the reasons I'll discuss further below, I don't think it's necessary to wait for the outcome of the external investigations for me to fairly reach a decision on whether Barclays should reimburse Mr A and Ms I's loss.

At the time of Mr A's payments to Company G, Barclays was signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code, which required firms to reimburse customers who'd been the victims of APP scams in all but a limited number of circumstances.

For the CRM Code to apply to Mr A's circumstances, I need to be reasonably satisfied that it's more likely than not that his payments to Company G were made for a fraudulent purpose – i.e., Mr A was the victim of an APP scam, and the funds were criminally obtained by Company G.

The relevant question I must ask in this case is whether Mr A transferred funds to another person (or company as is the case here) for what he believed was a legitimate purpose, but which was in fact fraudulent.

The threshold for establishing fraud is a high one and to fairly uphold Mr A's complaint I need to be satisfied that it is more likely – and not just equally as likely – that he was the victim of fraud.

I accept there is evidence which demonstrates Company G did undertake some legitimate activities, including carrying out work similar to what Company G led Mr A to believe his funds would be used towards. Company G's bank statements do indicate that it was making payments which appear consistent with the line of work it claimed to be engaged in. And, Mr A did, for a short time, receive some returns from Company G – as did other investors.

However, it's a key feature of sophisticated investment scams that business activity is seen to be taking place, along with investors receiving returns. This adds plausibility to the APP scam and increases the believability that the scheme is a genuine investment opportunity. It also reduces the detectability of the fraud and helps encourage investors to deposit funds and recommend the scheme to other investors.

An investment opportunity which has the appearance of being genuine does make investigations into such matters less straightforward. However, this doesn't prevent us from being able to reach a fair and reasonable conclusion as to whether it's more likely than not that something is an APP scam. Contrary to the legitimate activity taking place and returns being paid to investors, there's convincing evidence to suggest Company G was, most likely, operating an APP scam when Mr A made his investments.

In our Investigator's view, they provided a very detailed explanation for why they felt Company G was most likely an APP scam when Mr A invested. I don't intend to repeat what our Investigator said in similar detail. However, I've listed below what I consider to be the key pieces of information:

- Company G claimed to have an insurance policy in place that would provide protection for Mr A's investments and evidence of this policy was provided to Mr A. The insurance company has confirmed that no policy existed, and the document provided to Mr A was fabricated;
- Company G raised investment capital far in excess of the value of its legitimate work. It 'borrowed' approximately £25 million against a contract worth less than £5 million in revenue;
- Company G claimed to be in need of investment capital to fulfil a lucrative contract with a hotel chain. Whilst Company G had provided services to that hotel chain prior to Mr A's investment, there appears to be no such contract for Mr A's funds to be used towards. So, Mr A appears to have been misled about what his funds were to be used for; and
- Company G's directors have used a majority of investors' funds for personal reasons, including sending millions overseas with no apparent connection to legitimate business purposes.

Based on the evidence that's available, I don't think Company G intended to use Mr A's funds for the same (or even broadly the same) purpose as Mr A was led to believe. I'm satisfied it's more likely than not that Company G obtained Mr A's funds through dishonest deception and as a result, Mr A has, more likely than not, been the victim of an APP scam as defined by the CRM Code and his claim should be considered under the CRM Code's principles.

Under the CRM Code, there are exceptions to reimbursement. However, as Barclays didn't think Mr A had been scammed, it didn't assess whether any of those exceptions applied before declining Mr A's claim. So, I've thought about whether any exceptions to reimbursement apply in these circumstances.

A mutual third party introduced Mr A to one of Company G's directors at a social event, hosted by a club they were all members of. Mr A was provided with a detailed explanation as to what his investment would allegedly be used towards, and he subsequently communicated with both of Company G's directors via email before deciding to invest.

Mr A was provided with professional looking contracts setting out the terms of both investments. He also received a copy of a genuine contract Company G held with the hotel chain mentioned above, along with other material which appeared to corroborate Company G's need for further investment to fulfil its contract with the hotel chain. Mr A also received other fabricated documents, including a fake insurance contract, which appeared genuine to him at the time. Mr A also knew of other investors in Company G who had been receiving returns as planned.

I don't think the rate of return Mr A was promised (12.72% per annum) was so unrealistic that it ought to have given Mr A cause for concern that his investment with Company G wasn't legitimate. And, taking into consideration the other information which Mr A was provided (which I've referred to above), I think Mr A had a reasonable basis for believing this was a genuine investment opportunity.

I'm not persuaded any other exceptions to reimbursement apply in Mr A's circumstances. As a result, I think Barclays should now reimburse Mr A and Ms I's loss under the principles of the CRM Code.

Putting things right

To resolve the complaint, Barclays should:

- refund Mr A and Ms I £89,499; and
- pay 8% simple interest per annum on the refund from 15 calendar days after the claim was made to Barclays until the date of settlement.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Ms I to accept or reject my decision before 31 December 2025.

Liam Davies
Ombudsman