DRN-5868232

Complaint

Mr and Mrs J are unhappy that Barclays Bank UK Plc ('Barclays') didn't reimburse them after they reported falling victim to a scam.

Background

Mr and Mrs J report that they were victims of an investment scam in 2024. They learned about an opportunity to invest with a company I'll refer to as Company A. Mr J was well-acquainted with two of Company A's directors for many years and had met a third director socially. He stated that, based on their apparent lifestyles, he believed Company A was performing well. Company A claimed to have secured a contract with a major national hotel chain to refurbish and install new air conditioning units across numerous sites nationwide. It said it required upfront capital to fulfil this contract and intended to use investor funds for that purpose. Mr J first considered investing in 2023 but waited until he felt confident.

In April 2024, Mr and Mrs J transferred £50,000 from their Barclays account to Company A. The investment was structured as a loan with an expected return of approximately 18% per annum. Less than six months later, Company A entered administration. Its directors have since been arrested, and a substantive police investigation is ongoing.

Mr and Mrs J believed that they were the victims of a scam. They notified Barclays but it didn't agree to refund their losses. It considered that this was a private civil dispute. Mr and Mrs J had simply made an investment that had gone wrong. It pointed out that Mr and Mrs J were unsecured creditors of Company A and so could still recover their losses directly by contacting its administrators.

They weren't happy with that and so they referred their complaint to this service. It was looked at by an Investigator who upheld it. Barclays disagreed with the Investigator's opinion and so the complaint has been passed to me.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting point in law is that a bank is generally expected to process payments that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. It's common ground that this payment was authorised and so Mr and Mrs J are presumed liable at first instance.

However, that isn't necessarily the end of the matter. At the time of the payment, Barclays was a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under the CRM Code, firms are expected to reimburse customers who fall victim to authorised push payment (APP) scams, except in a limited range of circumstances. That obligation, however, isn't engaged unless I'm persuaded that they did indeed fall victim to a scam, rather than having a mere private civil dispute with Company A.

Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

> *"(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."*

Furthermore, DS2(2)(b) of the CRM Code says it doesn't 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"*

The first question, therefore, that I have to consider is whether Mr and Mrs J were the victim of an APP scam. To conclude that they were, it must be shown that (a) the purpose for which they made the payments and the purpose for which Company A procured them were different; and (b) that difference arose due to dishonesty or deception on the part of the recipient. The key issue, therefore, is the intentions of the recipient at the time the payments were made. While I can't know what their intentions were, I have to look at the other available evidence and attempt to infer what their intentions likely were.

The threshold for establishing fraud is a high one. In criminal proceedings, the standard of proof is "beyond reasonable doubt," but this service assesses cases using the civil standard of proof, which is based on the balance of probabilities. Under this standard, a finding of fraud must be more likely than not. Even so, the bar remains high. It is not enough for fraud to be a compelling or persuasive explanation, nor is it sufficient for it to be the most likely among several possible explanations. It must be more probable than the opposite conclusion i.e. that fraud did not occur.

Overall, I'm satisfied that available evidence meets that threshold. There is an ongoing police investigation into Company A. I don't know what the outcome of that investigation will be or how long it will take, but it is meaningful that the police are taking the allegations made by Mr and Mrs J and other investors seriously.

Furthermore, evidence has been shared with this service that shows that:

- Company A's apparent exclusive contract with a national hotel chain appears to have been fabricated. No such extensive agreement between the parties did in fact exist.
- The putative value of that contract between 2021 and 2024 was apparently £4.4 million. But during that same period, it ran up debts to its backers of in excess of £25 million. It raised for more capital than was necessary for it to merely take advantage of the opportunity offered by this valuable contract.
- The administrators found that Company A had misrepresented its tax position in its publicly available accounts. In short, it had underreported its liability to HMRC by £1.3 million.
- I understand the administrators found evidence of the directors taking money out of the company for invalid personal purposes, including sending money to overseas accounts and spending around £500,000 on improvement works to their own home.
- The company claimed to have an insurance policy in place that would protect investor funds and told investors the company that had underwritten this policy. However, subsequent enquiries have revealed that no such policy was ever taken out by Company A.

I acknowledge that there is evidence indicating Company A engaged in some legitimate activities, employed staff, and carried out certain work. However, based on the evidence outlined above, it is highly likely that the directors deliberately overstated the company's prospects to secure additional investment.

It is implausible that Mr and Mrs J intended for their funds to be used to cover the directors' personal expenses. In fact, the investment agreement signed by Mrs J with Company A explicitly states that the funds were intended to support Company A's work on its purported contract with the hotel chain. Overall, I am satisfied that there was a fundamental misalignment between the purpose for which the payment was made and the way it was used. This misalignment resulted from dishonest conduct on the part of Company A's directors.

As a result, I'm persuaded that what happened here meets the relevant parts of the CRM Code's definition of an APP scam. The CRM Code requires firms to reimburse customers in all but a limited number of circumstances. It is for the firm to establish that one of the exceptions to reimbursement applies. Broadly summarised, the CRM Code allows a firm to not reimburse its customer if it can show that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that the person or business with whom they transacted was legitimate.

Barclays hasn't provided evidence of any warnings shown when this payment was made nor has it argued that Mr and Mrs J ignored an effective warning. As a result, I'm satisfied that exception doesn't apply here. I have also considered whether they acted reasonably when making the payment, and whether there were any warning signs that should have alerted them to the possibility that this was not a genuine investment. On balance, I am satisfied that they had a reasonable basis for believing the investment was legitimate, and I will explain why.

- The investment was recommended to Mr J by people who he knew well. As I understand it, one of the other major investors in Company A had been a close personal friend of his for decades. He also knew two of the directors socially too. I don't find it unreasonable that he placed greater trust in their recommendation.

- He didn't act hastily here. From what I've seen, he first became aware of the investment opportunity in July 2023. He requested further information before agreeing to go ahead. He's shown that he had detailed email correspondence with representatives of Company A regarding its contract, the credit insurance policy and so on. I think, judged against the standard of the reasonable person, he acted cautiously here.

- The rate of return on the investment was higher than the rates available to retail investors more widely, but it wasn't so outlandishly high that it should've put Mr and Mrs J on notice of the risk that this might not be a legitimate investment.

Overall, I'm persuaded that Mr and Mrs J had a reasonable basis to believe that this was a legitimate investment opportunity and so Barclays should now reimburse them under the CRM Code.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr and Mrs J accept my final decision, Barclays Bank UK Plc needs to refund the payment they made in connection with the scam (less any returns that were received). It should add 8% simple interest per annum to that sum calculated to run from the date it declined their claim until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 30 December 2025.

James Kimmitt
Ombudsman