

The complaint

Mr E complains that Barclays Bank UK PLC ('Barclays') declined to reimburse him when he says he fell victim to an investment scam, losing him £60,000.

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, Mr E was introduced to an investment opportunity by an acquaintance he met online. His acquaintance told him about the company, which I will call 'B', saying that he had invested himself and had already seen returns. Mr E followed one of the directors of B online for two years, and then met the other director in person at B's offices. He understood they were involved in trading and investments. He was persuaded to invest with, and made two payments totalling £60,000 from his Barclays account.

Mr E did not receive any returns, nor his initial investments back. He had been provided with account statements which showed his investments growing, so he had decided to keep the funds in the investment. However, the directors of B stopped contacting him, and he later found out that B had gone into administration. Mr E said he then realised he had fallen victim to a scam and reported the matter to Barclays, asking them to reimburse his losses.

Barclays considered Mr E's complaint, but declined to reimburse him on the basis that it believed that what happened to Mr E amounted to a private civil dispute, rather than a scam.

Mr E was unhappy with Barclays' response, so he escalated his concerns to our service. One of our investigators looked into what had happened and recommended that Mr E's complaint should be upheld in part. 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 him the second payment of £50,000 in full, along with 8% simple interest, calculated from the date of Barclays' initial decision not to reimburse to the date of settlement. The first payment of £10,000 pre-dated the introduction of the CRM Code, so they considered whether Barclays ought to have done more to prevent this loss. They thought the payment was sufficiently unusual and out of character to have warranted an intervention from Barclays, but were not persuaded that any intervention would have identified the scam and therefore prevented Mr E's loss.

Barclays did not accept our investigator's recommendations, and asked for an ombudsman to consider this complaint. 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 second payment in dispute was made. The first payment pre-dated the implementation of the CRM Code, so I cannot consider it under the provisions of the Code. I will return to the first payment later in this decision.

In order for me to conclude whether the CRM Code applies to the second payment 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 Mr E 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 Mr E'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 he was the victim of a scam rather than this being a failed or bad investment.

Has Mr E 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 Mr E's payments meet DS1(2)(a)(ii). So I have gone on to consider if his intended purpose for the payments was legitimate, whether the intended purposes he and B had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of B.

From what I have seen and what Mr E has told us, I am satisfied that he made the payments with the intention of investing. I have not seen anything to suggest that he 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 Mr E 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 Mr E'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. Mr E had a loan agreement with B, as well as a managed account agreement. 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 Mr E, 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 Mr E and other investors were led to believe – and this was done through deception.

Whilst Mr E did not receive any returns, other investors did. But it appears that any returns that these other 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. So, even if any of Mr E'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 am satisfied that Mr E's payments to B meets the definition contained within the CRM Code. And so it follows that Barclays cannot fairly refuse to consider refunding Mr E 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 Mr E should be reimbursed under the CRM Code.

Is Mr E 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 Mr E. 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 have not suggested that they provided an effective warning for this payment, so I think I would not think it would be appropriate to rely on the exception to reimbursement that Mr E ignored an effective warning.

I also do not think that it would be fair or reasonable for Barclays to rely on the exemption to reimbursement that Mr E sent the money without a reasonable basis for believing that he was sending funds to a legitimate investment.

Given that Barclays are still arguing that B was potentially a legitimate investment gone wrong, it would be hard to argue that Mr E did not have a reasonable basis for believing that B was a legitimate company. And I think that there are other elements of what Mr E knew at the time he made the payments that would have given him a reasonable basis for belief that B was legitimate. This includes the fact Mr E understood B was an established company. The rate of return he was expecting, though not guaranteed, was not too good to be true. At the point he made this payment, he had already invested £10,000, and had seen this investment grow through statements B provided him with. He had built a rapport and relationship of trust with the directors of B over a few years at the point he sent the payment, and had been to their offices. Considering all of this – I think there was nothing that ought to have led Mr E to believe he was dealing with an illegitimate company.

With this in mind, I do not think that Barclays have established that any of the exceptions to the presumption of a full refund under the CRM Code apply here. And so, it follows that Barclays should reimburse Mr E in full under the provisions of the CRM Code for the £50,000 which was covered by it.

Should Barclays have done more to prevent Mr E's losses in relation to the first payment of £10,000?

The CRM Code came into effect in May 2019, so as I outlined above, it did not apply to the first payment Mr E made to B as this was sent in October 2018. But based on the other relevant rules relating to authorised push payment scams, I think Barclays should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual and out of character transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

So, I consider that as a matter of good practice, Barclays should have been on the lookout for unusual and out of character transactions and where necessary, taken proportionate interventions. I do think that the payment of £10,000 was sufficiently unusual and out of character that it ought to have appeared unusual and out of character for Mr E's account. But this is not, in and of itself, enough to say that it would be fair to ask Barclays to reimburse this loss. To ask Barclays to reimburse this loss, I would have to conclude that a suitable intervention could have prevented the loss. I am sorry to disappoint Mr E, but I do not think this is the case here. I'll explain why.

If Barclays had intervened and asked proportionate, probing questions, I do not think this scam would have come to light. In 2018, there was no negative information about B readily available, and it appeared to be operating as an investment company. Barclays would not have had access to information that Mr E did not about how B was operating, and I think that Mr E could have confidently answered their questions about the investment. And so it follows that I do not think it would be fair or reasonable to ask Barclays to reimburse Mr E for the £10,000 payment.

Putting things right

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

- Refund Mr E £50,000 of what he lost to the scam; and
- Pay 8% simple interest per annum on this amount from the date his claim was declined under the CRM Code to the date of settlement.

As B is going through insolvency proceedings, it is possible Mr E 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 pay Mr E £50,000, plus 8% simple interest from the date it declined to reimburse him under the CRM Code to the date of

reimbursement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 7 January 2026.

Katherine Jones
Ombudsman