

## The complaint

### Complaint

Mr M complains Barclays Bank UK PLC ('Barclays') hasn't reimbursed him following an Authorised Push Payment ('APP') investment scam he fell victim to. He says Barclays should reimburse him for the money he lost.

Mr M has brought the complaint with the assistance of a professional representative. For ease of reading within this decision, I will refer to Mr M in the main.

### What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mr M was introduced to an investment company, which I'll refer to as 'B'. He was predominantly introduced by an individual he used to work for who had already invested in B. Mr M then met with directors and attended various events hosted by B and built relationships with a number of people who had seemingly successfully invested with B. This then led to Mr M becoming interested in investing also. Mr M having met, the founders/directors of B at their offices and knowing others who had already invested and seeing the returns expected being achieved, decided to invest also. He passed the relevant paperwork to his accountant to view, who felt it was credible.

Mr M's understanding was that he would enter into a 'loan agreement' with B, on the basis that his funds would then be traded on his behalf (believing B would be carrying out Foreign Exchange 'Forex' trading). Mr M entered a number of agreements with B, and he still has copies of three of these. Over the years, he invested £30,000 in April 2018, £50,000 in August 2018, £45,000 in May 2019 and a further £5,000 in January 2020 via these loan agreements. The agreements set out he would loan B the above sums with B paying interest on the loan at a rate of 40% per annum. In January 2020 Mr M made a further investment of £5,000 to a trading platform, which he opened an account with in his own name and gave B the relevant authority to trade on his behalf.

B has now gone into administration and there is an ongoing police investigation into them. Mr M instructed a representative to send Barclays a letter of complaint in July 2024. Mr M said that B operated a Ponzi scheme for a variety of reasons including the fact B wasn't FCA regulated when it should have been, the contracts offered returns that were too good to be true, and managed funds agreements said that only 10% of invested funds were at risk. Mr M said Barclays should reimburse all of the payments and highlighted only two were covered by the Contingent Reimbursement Model Code ('CRM Code'), which are the ones processed in January 2020.

Barclays did not agree that a scam had occurred and instead felt this was more likely a failed investment. The case was passed to our service and our Investigator looked into it. They felt that if Barclays had intervened in the payments made before the inception of the CRM Code, it was unlikely the scam could have been uncovered due to the sophisticated nature of it. For the payment of £5,000 that was made under a 'loan agreement' with B in January 2020, they felt Mr M was the victim of an APP scam as defined in the CRM Code and that Barclays couldn't fairly apply an exception to reimbursement, so they were responsible for his full loss in relation to that payment. Finally, the last payment of £5,000 was made to what appeared

to be a genuine trading account so they did not think this was made as part of a scam. They therefore recommended that Barclays pay Mr M £5,000 plus interest.

Barclays still did not agree a scam had occurred and did not think excessive return figures or the mismanagement of investor funds was enough to evidence the bar of an APP scam had been met.

As an informal agreement could not be reached, the complaint has been passed to me 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a building society such as Barclays is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. In law, Mr M is responsible for payments he has authorised.

There are three separate sets of payments that I need to consider. These are the payments that were made prior to the inception of the CRM Code on 28 May 2019, the payment of £5,000 that was made as part of a loan agreement after the inception of the CRM Code, and the payment of £5,000 made to the trading account.

#### Payments not covered by the CRM Code

I have first considered whether these payments were unusual enough when compared with Mr M's genuine account activity to warrant an intervention from Barclays prior to them being processed. I can see that Mr M did make higher value transfers on his account from time to time, so I don't think the value of the majority of the earlier payment was particularly out of character. However, I do think the general pattern of payments made on 5 April 2024 was unusual, as he made four separate transfers to the same payee with the final payment of £10,000 bringing the total paid that day to £30,000. I therefore think the final payment on that day was unusual enough to warrant an intervention by Barclays.

I've gone on to consider whether an intervention could reasonably have uncovered the scam at that point and prevented Mr M from making further payments to the scam. On balance, I think this was unlikely due to the sophisticated nature of the scam. Mr M had been introduced to the scam by a trusted individual, who had themselves been introduced by other trusted individuals. Mr M and his wife had met the directors of B in person and attended social gatherings with them. Mr M had visited B's offices and had met a number of other investors. And even their accountant had reviewed the investment and found it credible. This, along with the fact there was no indication at that time that B was acting fraudulently, I think it is unlikely Barclays would have had concerns about the payment had they spoken with Mr M.

It follows that I do not think Barclays missed an opportunity to meaningfully reveal the scam prior to the inception of the CRM Code. So I do not think they need to reimburse the payments made prior to 28 May 2019.

I will now consider the £5,000 payment made as part of a loan agreement to B in January 2020.

Has Mr M been the victim of an APP scam as defined by the CRM Code?

Barclays has signed up to the CRM Code, which provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam in all but a limited number of circumstances. The CRM Code applies to authorised push payment (APP) scams which are defined as:

- (a) ...a transfer of funds executed across Faster Payments...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.

To decide whether Mr M is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr M thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mr M understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr M thought his funds would be used for general investment purposes as part of a loan agreement. I haven't seen anything to suggest that he didn't consider these purposes to be legitimate.

I've gone on to consider what purpose B had in mind and whether it was in line with what Mr M thought.

The investigator set out why they thought B operated a scam. I agree with these findings. Broadly, B received around £28m in investment capital from investors with loan agreements or managed funds agreements. Of that £28m, less than 17% was invested with around £4.1m being returned. This indicates a huge trading loss, yet around £19m was paid out to investors. Overall, I think it more likely than not that B operated a Ponzi scheme.

Mr M was offered rates of return of around 40%. There is no evidence to demonstrate that B was successfully trading and was able to generate such substantial profits. B also wasn't regulated by the FCA as it needed to be to undertake the activities claimed. As a private investment fund, B should not have solicited investments from retail investors or the general public as it did.

#### Application of the CRM Code

The CRM Code says that Mr M is entitled to a full refund unless Barclays can establish that an exception to reimbursement applies.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

There are further exceptions outlined in the CRM Code, but they don't apply to this case.

Did Mr M have a reasonable basis for believing the investment was genuine?

Having carefully considered the evidence I'm not persuaded Barclays could fairly apply this exception to reimbursement for the following reasons:

- Mr M was introduced to the investment opportunity by someone he used to work for, who he trusted. And this individual had already been investing, and had done so after being introduced by another investor in B, so I think he had good reason to trust in the investment.
- Mr M visited B's office before deciding to invest and met the directors on a number of occasions, who appeared to be knowledgeable and professional.
- Mr M reviewed brochures and other promotional literature and signed agreements with B which further legitimised the investment.
- He also had his accountant review the investment details and they felt it was credible, which I think would further legitimise the investment.

I'm also not satisfied that Barclays has demonstrated Mr M ignored an effective warning as they confirmed they did not intervene in the payment. Therefore, they did not provide any warning to him. Under the provisions of the CRM Code, this means that Barclays should reimburse the transactions covered by the code in full (subject to what I say below).

#### Payment made to the trading account

I have finally considered the £5,000 payment that Mr M made to a trading account, which he authorised B to carry out trades on his behalf on.

From the evidence our service has reviewed, I think it is more likely the trading platform itself was legitimate. It was authorised and regulated internationally, and users were able to log into the platform to track their profits and loss.

The providers of the platform have strongly refuted any allegations that any funds investors credited into their account was used for anything other than trading. They have said that in 2022, B's high risk trading strategy resulted in them losing all of their own investment capital, along with the funds of those individual investors who signed a Limited Power of Attorney with B, which would include Mr M. This resulted in the platform closing B's account.

As funds were sent to Mr M's own individual trading account with a legitimate trading platform – and used for the intended purpose of trading, I don't think this £5,000 payment meets the definition of a scam. I therefore think this payment should be treated as a civil dispute and I do not think Barclays should reasonably be held responsible for this loss.

#### Redress and calculation

As there is an ongoing police investigation, it's possible Mr M 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 process in respect of the 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 M for his consideration and agreement.

I calculate Mr M's outstanding loss from the payment to be £5,000. Barclays should pay interest on the above amount at the rate of 8% simple per year (less any lawfully deductible tax) from the date it declined his claim or 15 days after the claim was first made, whichever is earlier.

#### **Putting things right**

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**My final decision**

I uphold Mr M's complaint in part and recommend Barclays Bank UK PLC pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 January 2026.

Rebecca Norris  
**Ombudsman**