

## **The complaint**

Mr P complains that Barclays has declined to refund the money he lost in 2018 to what now appears to have been an investment scam. He brings his complaint with the assistance of professional representation, but for readability, in what follows I will refer solely to Mr P.

## **What happened**

In 2018, Mr P invested in an unregulated property scheme (that I'll refer to as W). He made this investment through a £10,000 bank transfer from his Barclays account in February 2018.

W has since entered liquidation and Mr P has highlighted significant concerns that it may have been operating fraudulently.

Mr P reported what had happened to Barclays in 2023. He complained when it did not reimburse him. He said Barclays had breached a duty of care by failing to question him about the original payment and, had Barclays done so, it would have come to light the investment was not legitimate, and the loss would have been prevented.

Barclays said Mr P's payments had been invested with a legitimate company that appeared to have gone into administration. It did not consider Mr P had been the victim of an APP scam — this had been a failed investment. In any event, Barclays said it wasn't liable for any losses because Mr P had authorised the payment, and it did not have any reason to intervene or block Mr P's payment request.

Mr P referred the matter to our service and one of our Investigators didn't uphold his complaint. The Investigator thought it likely this had been a scam, contrary to Barclays's position. Furthermore, she thought Barclays should have spoken to Mr P about the payments when he'd made them, given the relatively large value. But even had Barclays done so she didn't think Barclays (or Mr P) would have had sufficient grounds to conclude the investment was not legitimate given what it could reasonably have uncovered at the time. She didn't think Barclays could have prevented Mr P's loss.

Mr P maintained that had Barclays intervened it would have been able to identify several concerning aspects of the investment, and therefore should have warned him this was a scam. Had it done so, this would have stopped him from making the payments, and avoided the loss he has now sustained.

As no agreement could be reached, the case was 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.

The starting position in law is that Mr P is responsible for transactions he's carried out himself. Mr P doesn't dispute that at the time, he intended to make the payments, albeit in the belief he was investing in a legitimate scheme.

However, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I'd expect Barclays to have been on the lookout for out of character or unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud or scam.

I consider it to be appropriate for a customer's previous account activity, among other factors, to be taken into account when deciding whether a payment instruction does, or does not, present a sufficiently heightened risk that it would justify an intervention before processing the transaction.

Here, Barclays did not intervene. It says the payment was not unusual for Mr P's account. and would not have appeared remarkable. It says it had no reason to intervene, rather than fulfilling its obligation to carry out Mr P's payment instruction without delay.

However, Barclays hasn't evidenced its assertion that the disputed payment wasn't unusual for Mr P. It may be correct in this, and the payment may indeed have been unremarkable for Mr P's account at that time. But given I have been unable to confirm this, I have considered the contrary position to establish if that would lead me to reach a different outcome.

In other words, I've considered the implications for the outcome of Mr P's complaint in the event Barclays was incorrect - if instead this payment was unusual for Mr P. In the event the payment was sufficiently unusual, then as a matter of good industry practice, I would have expected Barclays to have intervened here and spoken to Mr P about the payment prior to processing it.

But even had this happened, I consider it unlikely this would have prevented Mr P's loss. While there are now significant concerns about the legitimacy of W's business, these first began to surface in the period surrounding W's liquidation, and therefore several years after Mr P's payment was made.

I cannot rely on the benefit of hindsight – I must consider what Barclays could reasonably have established in the course of proportionate enquiry to Mr P about his payment back in February 2018.

And with that in mind, I don't think it would've been apparent in 2018 that W was likely fraudulent rather than simply a risky investment. I'm not persuaded sufficient information was readily and publicly available at the time which would have caused Barclays (or Mr P) specific concerns about this.

Mr P has provided copies of investment literature I understand he received at the time. This appears professional and not obviously anything other than legitimate. It gave an explanation of the risks involved, recommended investors should seek independent financial advice prior to making an investment decision and indicated that the financial promotion had been approved by an FCA regulated firm. The brochure didn't for example falsely claim that the investment itself was FCA regulated – it said the contrary. On the face of it, I don't think there was enough here for Barclays to have reasonably suspected W was other than it seemed.

It is possible of course that the investment might have represented a greater degree of risk than was suitable for Mr P to take. But Barclays didn't have any obligation to step in to protect its customers from potentially risky investments. Taking steps to assess suitability without an explicit request from Mr P (which there was not) would have gone far beyond the scope of what I could reasonably expect of it in any proportionate response to what, on the face of it, was a seemingly legitimate payment request from its customer.

In short, while I've carefully reviewed all of Mr P's submissions, I don't find that significant concerns would (or could) have been readily uncovered by either Barclays or Mr P at the relevant time. I can only reasonably expect any enquiries by Barclays to have been proportionate to the perceived level of risk. All considered, I don't think it likely that Barclays could have prevented this payment from being made, or otherwise caused Mr P not to proceed.

Finally, by the time Mr P reported the matter to Barclays, I understand that the receiving bank account was no longer active and so no funds would have remained for recovery at that point. So, it simply was not possible for Barclays to have retrieved Mr P's money.

Having carefully considered all the evidence available to me, I don't find Barclays could have reasonably prevented Mr P's loss here. Neither do I find it materially at fault otherwise. I appreciate this will not be the answer Mr P would like me to give, and I am sorry to have to disappoint him. He has lost a significant sum. But it is simply the case that I don't consider I can fairly and reasonably hold Barclays liable for that loss.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold Mr P's complaint about Barclays UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 December 2023.

Stephen Dickie  
**Ombudsman**