

The complaint

Mr H is complaining that Barclays Bank UK PLC have not refunded payments he made from his savings account to invest in a property company, which he now believes to be fraudulent.

What happened

Mr H was contacted by a cold caller who told him about an opportunity to invest in a property company. Mr H was sent brochures and documents about the company which appeared convincing and professional. On 9 February 2018 Mr H made two separate online faster payments of £50,000 to an investment company which he believed was acting as an agent of the property company.

Mr H received three dividend payments between July 2018 and July 2019, totalling around £10,000. He now believes the dividend payments were not genuine dividends, but were paid from new funds from other investors to supply a 'false' security.

The dividend payments stopped after July 2019, and at some point after this Mr H suspected he'd been the victim of fraud. In October 2022 he contacted Barclays through a third party representative to raise a complaint. Mr H's representative then referred the complaint to us.

Our investigator looked into Mr H's complaint, but he didn't think Barclays should refund the payments Mr H had made to the investment company. Mr H didn't accept the investigator's view, so his complaint has now been passed to me for review and a 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.

I'd like to say firstly that I do understand that this experience must continue to be a very upsetting one for Mr H, and I'm sorry that he's found himself in this situation. It appears that he's lost out significantly here and I can see why he'd think he should receive a refund of the money he paid to the investment company. But I don't think that I can fairly say that Barclays should refund the money Mr H lost. I'll explain why.

Mr H's representative has mentioned the Lending Standards Board's Contingent Reimbursement Model (CRM) code, which is a voluntary code designed to protect customers from Authorised Push Payment (APP) Scams. But this code didn't come into force until May 2019 – over a year after Mr H's payments were made – and it isn't retrospective. So, I can't consider his complaint with this in mind.

Mr H's representative has provided a lot of information about why they believe the property company he invested in behaved fraudulently, much of which appears to have come to light some time after he made the payments in question. But I must make my decision based on the information that was available to both parties at the time Mr H made the investment – in order to decide what, if any, action Barclays should have taken at the time, and whether any action they did take would have made a difference to what happened.

It's not in dispute that Mr H authorised the payments. And Barclays have a duty to act on his instructions. But in some circumstances a bank should take a closer look at the circumstances of the payments – for example, if they ought to be alert to a fraud risk, because the transaction is unusual, or looks out of character or suspicious. And if so, the bank should intervene, usually by contacting the customer directly, before releasing the payments.

Barclays didn't intervene here, and they've explained why – and I consider their explanation to be reasonable. It's true that the payments here were high value, and that Mr H hadn't made any payments to this investment company before. But Barclays have explained that Mr H had made a number of similarly high value payments before he'd made the payments in question – and from reviewing his statements I can see this is the case. In this context, the payments he made to the investment company didn't look unusual or suspicious. And Barclays have pointed out that the investment company itself was a legitimate company regulated by the Financial Conduct Authority (FCA). I accept that at that time Barclays had no reason to suspect that it was involved with fraud.

I've thought carefully about the circumstances here and overall I don't think there was anything suspicious or unusual about the payments such that Barclays should have been alerted to intervene. But even if Barclays *had* intervened here, for example by contacting Mr H directly to ask some questions about the investment as his representative has suggested, I don't think this would have made a difference to his decision to proceed with it. I say this because Mr H had clearly been led to believe this was a genuine investment opportunity and a safe place for his money. The documents he'd been supplied with about the property company were professional and convincing, and the investment company he made the payments to was regulated by the FCA. I've not seen anything to show Mr H had a reason to doubt the legitimacy of the investment at that time. So, I think Mr H would have told Barclays to proceed with the payments. And I don't think Barclays would have had any grounds to do otherwise.

Once Mr H told Barclays he suspected he had been the victim of fraud, I would have expected them to attempt to recover his money from the beneficiary's bank immediately. Often in these circumstances, funds are moved on from the beneficiary's account very quickly to prevent successful recovery. But Barclays have said that it didn't make any attempt to recover Mr H's money, because by the time he reported his suspicions it was too late for there to be any reasonable prospect of successfully recovering it.

It's not clear when Mr H first reported his suspicions to Barclays. His representative says it was around the time the dividends stopped, which was in July 2019. But on reviewing his contact history with Barclays I can't see any evidence of Mr H contacting them about this before October 2022. But even if I accept Mr H's version of events, it was over a year after the payments were made. So, I agree with Barclays that there was no reasonable prospect that recovery would have been successful after that time, even if they'd attempted it. So, I don't think Barclays ought to have done more to recover Mr H's money.

I'm very sorry to disappoint Mr H. However, for the reasons I've explained, I don't think Barclays should have done more to prevent his loss. So, it wouldn't be reasonable for me to ask them to refund the payments he made.

My final decision

My final decision is that I'm not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 18 November 2023.

Helen Sutcliffe
Ombudsman