

The complaint

Mrs I and Mr I complain that Barclays Bank UK PLC (Barclays) won't refund money they lost in an investment.

What happened

What Mrs I and Mr I say:

Mrs I and Mr I are represented by a third-party firm of solicitors, but I will refer to them as the complainants here.

In 2017, Mrs I and Mr I were approached by an investment advisor (whose firm I will call 'A') and advised to invest in an overseas Special Purpose Vehicle which invested funds into an oil project in the USA. This was set up as company 'B'. They were told that they were guaranteed returns and their capital was safe – and after a few years it would double or triple. Mrs I and Mr I say they had no investment experience and were employed in jobs earning a combined £49,000 per annum.

They made four payments to the oil project company B:

Date	Payment	Amount
30 January 2017	Online payment to B	£14,700
10 March 2017	Online payment to B	£14,700
26 April 2017	Online payment to B	£20,400
15 May 2017	Online payment to B	£50,000
Total		£99,800

Mrs I and Mr I received two dividend payments totalling £3,080.55 in October 2017 and an interest payment of £1,190.37 in March 2018. But no further payments were received. In February 2019, they got some communications from the director of B to say there were problems with its 'payment platform'. No further payments were received and in May 2019, Mrs I and Mr I were contacted by a third party to say this was a scam investment.

In January 2023, Mrs I and Mr I complained to Barclays. They said the payments were unusual and should've been stopped by Barclays, but they weren't. They say Barclays should've done more to protect them – and if they had, they wouldn't have made the payments. Barclays were the experts in such matters and they would've told Mrs I and Mr I about the risks of such an investment.

What Barclays said:

Barclays said the payments weren't covered by the Contingent Reimbursement Model (CRM) Code (which gives customers who have fallen victim to a scam some protection) – as this came into existence in May 2019, before the payments were made. The payments had been properly authorised by Mrs I and Mr I. And everything looked legitimate about the investment – as they had received dividends.

Barclays declined to make any refunds.

Our investigation so far:

Mrs I and Mr I brought their complaint to us. Our investigator didn't uphold it. He said:

- The first three payments couldn't be seen as unusual. There was a payment of £15,240 in February 2016, and there were some other high value payments – such as one for £10,000 in March 2016 and £9,000 in June 2016.
- But the fourth payment for £50,000 should've been flagged by Barclays as being out of character.
- But even if Barclays had done so and spoken to Mrs I and Mr I about it, he said it was likely it wouldn't have made a difference because (1) the scam didn't come to light until much later, in 2019 and (2) Company B was listed at Companies House, and there wasn't any adverse media coverage about it.
- On recovery, he said company B had gone into liquidation in 2019, and therefore there wasn't any money to be recovered.

Mrs I and Mr I didn't agree. They said:

- The payments were out of character. The payment for £15,240 was to a reputable investment company. And the payments to company B was to a new payee.
- Barclays had a responsibility to ensure they acted in the best interests of consumers. Had they contacted Mrs I and Mr I, they would've identified the context of how they became associated with the investment – which had the hallmarks of a scam.
- They said the funds should be refunded, plus a payment for distress and inconvenience.

The complaint has therefore come to me to make 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 broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account.

But – I need to consider this complaint in the context of the guidance that banks were working to at the time of these payments.

In January to May 2017 (when the payments in question were made), there were some limited circumstances where a bank should have taken additional steps before processing a payment to help protect customers from the possibility of financial harm. For example, there were some guidelines which should have been followed when older or vulnerable customers asked to make unusually large cash withdrawals or where someone appeared to be telling them what to do.

In recent years, there has been an increase in sophisticated fraud and scams, leading to greater expectations of banks in terms of their role in preventing fraud. For example, the British Standards Institute's 'Protecting Customers from financial harm as a result of fraud or financial abuse – Code of Practice' was published in October 2017. This recognised that banks should look to identify and help prevent transactions – particularly unusual or out of character transactions - that could involve fraud or be the result of a scam.

It was later – that the expectations of banks were increased: with the Banking Protocol in 2018; and the Financial Conduct Authority's Banking Conduct of Business Sourcebook 5.1.10A (R) (since 13 January 2018) & 5.1.10B (G) (since 19 December 2018).

And the Contingent Reimbursement Model (CRM) Code, effective from 28 May 2019, was set up to provide some protection for customers who fall victim to Authorised Push Payment (APP) scams, and also to reduce the occurrence of APP fraud.

It can be seen that the increased expectations of, and guidance given to, banks – only took place after the payments in question.

Bearing all of this in mind, I need to decide whether Barclays acted fairly and reasonably in its dealings with Mrs I and Mr I when they requested the payments - based on the expectations of banks in 2017.

Having done so, I'm not persuaded Barclays should refund Mrs I and Mr I the money they lost. I say that – based on the fact that Barclays (and other banks) were not expected to scrutinise payments in 2017 in the way they were later on – as I've set out.

Against that, I don't think it's reasonable for me to consider that the payments should've been stopped and questioned by Barclays.

But I have gone on to consider that if they had done so, would the payments have been made in any case. And – I'm persuaded that Mrs I and Mr I would've gone ahead anyway. I say that as:

- I can see that company B was listed at Companies House and was incorporated in 2015. So – it does appear to have been a legitimate trading company. It filed accounts up to the year ended November 2017.
- A liquidator was appointed in November 2019 – which indicates this was an investment that unfortunately failed – the payment was made to a legitimate trading company. This is different to a scam - where the scammer takes money with no intention of providing any services or returning the money. This is reinforced by the fact that some dividends were paid.
- I can also see that the advisory company A was incorporated at Companies House in 2015 – and still remains in business.

- So – the investment company B and the credentials of the advising company A looked acceptable, and I'm persuaded that it's likely that Mrs I and Mr I would've said that to Barclays if they had intervened.
- I also note that it wasn't the role of Barclays to give investment advice – they were being asked to make the payments. So – I don't consider they were required to advise on the investments in the context of Mrs I and Mr I's circumstances.

Therefore, in summary I don't hold Barclays liable to refund any money to Mrs I and Mr I.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Barclays took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money.

Barclays didn't try to recover the money. But – as Mrs I and Mr I didn't complain to Barclays until January 2023, I don't think it's likely that any funds would've remained. I say that as a liquidator was appointed in October 2019. I can see that the liquidation is still in progress – as a liquidator's report was filed in December 2023. I would suggest that Mrs I and Mr I contact the liquidator to file their claim in accordance with the instructions – the information can be found on the Companies House website. But – I should also say that the latest liquidators report says that unsecured creditors are unlikely to be paid a dividend.

I accept that this will be a disappointment for Mrs I and Mr I, but In summary, I do not uphold this complaint for the reasons I've described. **(continued)**

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I and Mr I to accept or reject my decision before 30 January 2024.

Martin Lord
Ombudsman