

The complaint

Limited company H complains that Barclays won't reimburse it for payments made by its director to an investment scheme that has since been revealed to have been fraudulent in nature.

While H is represented by a Claims Management Company in bringing this complaint, for clarity, as far as possible I will only refer to H and its director Mr H in what follows.

What happened

According to the records filed with Companies House, H was incorporated on 30 January 2020, listing Mr H as its sole director. The nature of the business is recorded as being the operation of sports facilities.

Since at least July 2019, Mr H says he'd been investing in a personal capacity with an investment scheme offering exceptionally high returns, which I will refer to as M.

Mr H says he'd been introduced to this investment scheme by friends and family. He says he'd believed it was legitimate based on these personal referrals and the positive online presence of M.

M purported to achieve these returns by importing and reselling mobile phones. However, it has since come to light that it was operating fraudulently and was essentially a Ponzi scheme, paying out returns from later investors' money rather than from profits.

After H's incorporation, it opened a business banking account with Barclays. The first business account transactions (other than a nominal credit to open the account) were made in June 2020. On 30 June 2020, H received a credit of £50,000 which it says was from the Bounce Back Loan Scheme (BBLs).

It might now be helpful to outline what the BBLs involved. According to the website of the British Business Bank (which accredited BBLs lenders) the BBLs was set up in May 2020:

"to help smaller businesses impacted by coronavirus (COVID-19). It aims to assist businesses to borrow between £2,000 up to 25% of a business' turnover (the maximum amount available is £50,000)".

The scheme involved a government commitment to "cover any interest payable in the first 12 months", and it provided "a full (100%) government-backed guarantee against the outstanding balance of the facility (both capital and interest)". The BBLs terms required all borrowers to declare: "they will use the loan only to provide economic benefit to the business, and not for personal purposes".

While H's business account with Barclays shows a number of small debits and credits following the BBLs credit, the balance in the account did not vary significantly following the receipt of the credit - until 7 October 2020. On that date, four payments for £7,500 were sent to M – a total of £30,000. These payments were made to an account M held. Mr H believed

these would be credited to an investment account held in his name.

H says no returns were received as a result of these payments (either by it or by Mr H). The money has been lost. H reported the scam to Barclays. H also reported it to the bank that received the payments, the complaint about which is the subject of a separate decision.

Barclays declined to refund the payments – it didn't consider it was liable to do so. However, the bank that received the payments has since paid Mr H the sum of £10,000, representing one third of the sum sent from H's account with Barclays.

Our Investigator looked into H's complaint about Barclays. She thought it shouldn't be required to refund H. She said that the evidence led her to believe the funds sent from H's account had been invested for the personal benefit of Mr H, not for business purposes connected to H. She didn't think it would be fair to ask Barclays to reimburse H.

H didn't agree and pointed to other complaints referred to this service in similar circumstances where a full refund had been given.

In light of the disagreement, I have been asked to reach a final decision on the matter.

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 consider the crux of this complaint is the question of whether these payments were made to benefit H as a business or to benefit Mr H personally.

Initially H's and Mr H's representative said: *"Our client mentioned he liked everything about it - many friends and family were investing and had great reviews. It seemed very established and looked like it would be a great investment opportunity. Our client wanted an additional income so this seemed like it would have been suitable for our client."*

It quotes Mr H as stating: *"I only had one [investment account with M] so both my personal and business investments went into that pot. After the business funds got invested I got no returns at all."*

Mr H has since said: *"Yes this was all invested from the [business] account for business purposes only. Our aim was to get a profitable return to be used solely for business purposes, then to buy equipment and send on our facility."* [sic]

I am satisfied that H and Mr H have been given ample opportunity to clarify the situation.

But I find this testimony somewhat contradictory. The initial comment indicates this investment was to provide an additional income for Mr H, and he'd been enticed into the investment through the personal recommendation of his friends and family. Furthermore, the payment was going to an investment believed to be held in Mr H's name, not one in H's name. This all suggests that the payments from H's account were for Mr H's personal benefit and seems to me inconsistent with his later explanation that it was 'for business purposes only'.

Where there is contradictory evidence, as I find there is here, I am required to reach my findings on the balance of probabilities – in other words on what I consider to be most likely given the information available to me.

I consider it relevant here that Mr H had been investing with M for some time prior to the payments from H and that he'd seemingly done so in a wholly personal capacity. By his own admission the payments from H were intended for an investment account he believed he held in his personal name. I find that to be consistent with Mr H's initial account of the matter that this was something he saw as a great investment opportunity and one that he hoped would provide him with an additional income. It is not, on the face of it, consistent with that money remaining under the ownership of H.

I also consider it relevant that the nature of H (as recorded on Companies House) was not related or obviously connected in any way to the making of investments or the online resale of mobile phones.

Neither have I seen contemporaneous evidence that would support Mr H's claims that the payments were for business purposes only — for example any documentation to support the assertion that the investment did not belong to Mr H, as it otherwise would nominally appear.

In support of what he now claims, Mr H has provided statements from a personal account he holds with bank S. These show credits from M, and payments to buy what appears to be sports clothing and equipment – for example in August 2020 it appears to show two payments to sports retailers for £94.19 and £111.97, together with a swimwear purchase for £86.79. I understand Mr H seeks to establish that he used the proceeds of the investment with M to pay business costs. However, all of the statements Mr H has produced date from prior to October 2020 which is when H made the payments to M. I am not persuaded that I can safely draw any inferences from these to the payments being disputed here.

I've also taken into account that H has referred to other complaints this service has considered for other companies (who also invested their BBLs proceeds into M). But I am required to decide every case on its own merits, and I must reach my findings in the current complaint based on the specific facts and evidence I am presented with.

And having considered the evidence before me, while I cannot know for certain what the intent behind these payments was, I find it is more likely than not this was intended for the personal benefit of Mr H, not the business of H.

Finally, I will explain the consequences of that finding, in so far as those impact the complaint I have been asked to decide.

Mr H was withdrawing money from H's account for his own benefit – it is not disputed that he authorised these payments or that he had authority to make such a withdrawal.

As such he was essentially withdrawing an asset from H for his own use. I think it most likely that would constitute a loan from H to Mr H (in the absence of any evidence to the contrary – although the following logic holds for similar reasons were this alternately established to have been a return of capital).

Mr H has then lost those funds to the scam perpetrated by M. But H has not suffered a loss – Mr H has, which is not the same thing. The money is owed by Mr H to H.

It follows that any reimbursement now sought by H in respect of those payments should be addressed to Mr H. It cannot fairly be directed to Barclays, there is no loss on H's part for which it could fairly be held responsible. And similarly, I cannot fairly require Barclays to consider the payments under the terms of the CRM Code – H has not suffered a loss and so the payments do not fall within the scope of what the code is intended to cover. Neither do I consider it fair and reasonable to hold Barclays liable for these payments for any other reason.

All considered and given what I have set out above, I do not find it would be fair and reasonable in all the circumstances of this specific complaint for me to require Barclays to refund H.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 29 September 2023.

Stephen Dickie
Ombudsman