

The complaint

Mr A complains that Barclays Bank UK PLC won't refund him the money he transferred to a travel agent who failed to provide the trip he paid for.

What happened

Mr A has explained he was looking to complete a religious pilgrimage and that he was provided with details of a travel agency (who I'll refer to as F) by a friend, who had used F in the past. Mr A has said he checked the legitimacy of F by asking people who had used the firm before for their reviews, all of which were positive. He also checked F's online presence and saw it had been operating for over ten years and had built a respectable reputation within the community. Mr A has also said he spoke to an agent via phone and instant messaging and was aware F had a physical office.

On this basis, Mr A felt confident in making a booking and so on 6 January 2023 he sent over £6,000 for a pilgrimage package. However, Mr A says after F had received his funds, he struggled to receive communication and identified other individuals online experiencing the same issues, claiming to have been scammed.

F has since gone into liquidation and, having checked the ATOL website, Mr A has questioned whether it was ever ATOL registered (as it stated it was). He's also explained that the process for booking this particular pilgrimage changed in 2022 to a centralised system, and while F persuaded him that it would be able to book pilgrimage packages, it's unclear if this was ever the case.

Being left considerably out of pocket and believing he'd been the victim of a scam, Mr A reported the matter to his bank, Barclays.

Barclays looked into what had happened but didn't think it was liable to refund Mr A. It didn't think it had been established that Mr A had been the victim of an Authorised Push Payment (APP) scam. Rather it thought this was a private civil dispute between Mr A and F.

Mr A disagreed and so referred the complaint to our service. An investigator considered the complaint. During her investigation, she obtained evidence from various parties, including F's bank, in an attempt to confirm Mr A's concerns that this had been an APP scam. However, she didn't think the evidence pointed towards F having had no intention to provide the trip he paid for. She therefore didn't consider Barclays was liable to refund the losses Mr A had incurred.

Mr A disagreed with the investigator. He considers that while F was initially running a legitimate company, this at some point changed and F took payments with no intention of providing the promised trips.

As Mr A disagreed with the investigator's findings, the complaint has been referred 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.

I'm very sorry to hear of what's happened here to Mr A. I appreciate this trip would have had significant meaning to him and that he has been badly let down.

Based on everything I've seen, it seems hard to argue other than that F has breached its contract with Mr A. But I'm not deciding a dispute between Mr A and F – I don't have the power to look into a complaint about F. My role is limited to deciding the dispute between Mr A and Barclays.

As a starting point in law, Mr A is responsible for payments he's instructed Barclays to make. Unfortunately, there's little protection available to him for bank transfer payments, like these were. The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it specifically excludes private civil disputes.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as F's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

Specifically, the CRM Code details that private civil disputes can include payments made to a legitimate supplier where the goods ordered, or services agreed, were not received. The CRM Code will not apply to payments that meet that definition.

Instead for a payment to be covered by the CRM Code, it must meet the definition of an APP Scam under the CRM Code. In this context, that would require that the very purpose for which F procured the payment was different to what Mr A believed, due to dishonest deception. While Mr A has raised concerns about how F presented itself and whether it was honest in its credentials or capabilities, I can't say that the purpose for procuring payment was dishonest – in other words I can't conclude that F obtained funds from Mr A with no *initial intention* of providing the service agreed.

I don't dispute that F *didn't* provide the service he agreed to – but I don't think the intention behind this is clear enough to conclude that F set out planning to take Mr A's funds, and provide nothing in return. I say this based on F's clear previous history of providing a travel agency service which seems to have been positively received, which isn't the hallmark of a typical scam of this nature. While genuine firms can undoubtedly go rogue, there are also other possibilities for what happened here, such as genuine financial issues for example that could've resulted in this same outcome and that I can't overlook as equally possible.

I've carefully considered Mr A's evidence that F was never ATOL protected. While I appreciate F doesn't appear on ATOL's database when searched, this appears to be the case for firms that aren't trading, so I don't consider this conclusive evidence that F wasn't ATOL protected at the time it received Mr A's funds. In any event, going back to the test here of whether F had an initial intention to defraud Mr A, it's clear F *has* provided its services as agreed in the past, so whilst it would undoubtedly be an illegitimate and misleading advertisement to claim to be ATOL protected when it wasn't, I don't consider this would conclusively confirm F was intending to scam Mr A when he sent his funds.

Similarly I can appreciate Mr A's concerns about whether F was ever able to provide the service it offered, based on recent changes to booking processes in place. However, even from the evidence Mr A has provided, it seems there was some ongoing uncertainty at the time Mr A made his booking about how future pilgrimages would be affected and how this would, in turn, impact travel agencies. The article Mr A has referenced even comments on how changes have resulted in 'turmoil' for the tour industry with firms facing 'a potential end to their business' as they 'carefully negotiate' (this article predating Mr A's payments by around six months). I therefore can't fairly conclude that F's intention was to offer services it *knew* it couldn't provide. On the contrary, from evidence I've seen, it seems just as possible that these changes could have contributed to F ultimately failing as a firm.

Simply put, in order to find Barclays was somehow liable to Mr A under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate

criminal scam from the outset rather than it being a private civil dispute between Mr A and F. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of F breaching its legitimate contract with Mr A.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that F set out to defraud Mr A with criminal intent. That is a high bar to meet.

When considering this complaint, our investigator contacted the firm holding the account that received Mr A's payments. While I cannot detail the information that the recipient firm has provided in response, that information is not consistent with F having set out to defraud Mr A. Rather it suggests that the account's use was consistent with someone carrying out this sort of work.

All things considered, I simply can't safely conclude that F took Mr A's money without ever having any intention of providing the service he paid for. The evidence available to me simply isn't enough to support such a finding.

I appreciate how frustrating and disappointing this answer will be. Mr A has lost a lot of money as a result of F's failure to provide a service. But I can't exclude the possibility that F entered the agreement in good faith, intending to provide the service (as reviews suggest it had apparently done for other customers previously) and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that F intended to steal Mr A's money from the outset and never had any intent of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Barclays responsible for the loss suffered here by Mr A. It also means I find the bank had no ability or obligation to try and recover his money.

My final decision

My final decision is that I don't uphold Mr A's complaint about Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 3 April 2024.

Kirsty Upton
Ombudsman