

The complaint

Mr C is unhappy that Barclays Bank UK PLC has decided not to refund him after he says he was the victim of a scam.

What happened

Mr C made multiple payments to A on the understanding she was booking holidays, for him and his family.

The investigator set out a detailed background to the events in his findings, which aren't in dispute, so I won't repeat them in full here. Only to highlight the key points made by Mr C that he was the victim of a scam, which are:

- Not all of the payments to A are disputed, some services were provided to Mr C and his family. But he indicates this was a tactic used by A to gain trust and to entice further payments from him and others.
- A returned £5,000 to Mr C, which formed part of the payments he's disputing here as being a scam. Those were deducted from his losses as well another payment where the services were received from A. Mr C said these funds were returned because A said the holiday was cancelled by the provider last minute, and A said she'd return this out of her own pocket. Mr C claims that if the holiday provider cancelled the holiday, then it should provide the refund. Her actions here further support that she was not acting legitimately.
- A is being criminally investigated by the police and there are a number of other consumers who have similar claims. This is an indication that she wasn't acting legitimately.
- Barclays have refunded other consumers and, in this instance, Mr C's partner for their losses.
- A created fake persona's, and claimed she was ATOL and ABTOL protected.
- She targeted friends and family, abusing a relationship of trust to gain their money. She partially fulfilled promises to gain more victims.

Barclays decided not to refund Mr C's losses, it said the matter was a civil dispute rather than an Authorised Push Payment (APP) scam and therefore Mr C was not entitled to a refund under the Contingent Reimbursement Model (CRM) code or otherwise. Its basis for concluding this was that Mr C had received a partial refund, and had received some services from A.

Unhappy with this outcome Mr C brought his complaint to our service.

The investigator concluded that there wasn't enough convincing evidence to show, that on balance, Mr C had been the victim of an APP scam. He concluded that Mr C and other family members had previously interacted with A and received the services they paid for. Whilst Mr C didn't get what he paid for in this instance that wasn't enough to say he'd been the victim of an APP scam. He wasn't persuaded that A had set out with the intention to

defraud Mr C from the outset. Many of A's actions including the refund of some money and part receipt of goods didn't support a finding that she never intended to provide the services. The investigator considered the recipient bank accounts as part of his investigation. He explained he couldn't provide detail about those accounts due to data protection reasons - as it related to another person's bank account. But he was satisfied that what he found supported a finding that there was not enough convincing evidence that Mr C had been the victim of an APP scam.

Mr C didn't accept the investigators findings and asked for an ombudsman to review the complaint.

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, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

It isn't in dispute that Mr C authorised the payments that left his account. The starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transaction. But he says that he has been the victim of an APP scam and that A's intent from the start was to deceive him.

Barclays is a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM code does not apply to "private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

It's important to note that I am not deciding a dispute between Mr C and A – I don't have the power to look into a complaint about A. My role is limited to deciding the dispute between Mr C and Barclays. So, I need to decide whether Barclays acted fairly, when concluding that this amounted to a civil dispute and not an APP scam. I'm satisfied that it did, and I'll explain why below.

In order to be persuaded on balance that Mr C has been the victim of an APP scam I need to look to the definitions set out in the CRM code. At

DS1(2)

(a) APP Scam Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person;

or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

And the FCA handbook glossary which says

A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent

Looking to these definitions I firstly need to consider the purpose of the payment and whether Mr C thought this purpose was legitimate. Which I'm satisfied he did. I haven't seen correspondence for the exact purpose for each and every payment that Mr C made to A. But I accept that the payments he made were for holidays and he was making payments on behalf of other friends and family members as well.

Then I need to consider the purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Mr C understood to be the purpose of the payment.

Here there is evidence that A had offered not only Mr C and his family holiday bookings, but others as well. A had done so for quite some time and many people received what they paid for. This was not limited to holidays but also other types of ticketed events.

There will of course be limited information available to me regarding A's intended purpose of Mr C's funds. As I said, I'm not investigating A as individual and there is only certain information both I and the investigator have had access to in the course of this investigation. However, what I have seen is:

- A sent messages to Mr C and others to "confess" what had been happening. She explained things had spiralled but she'd intended to provide customers with the holidays she'd promised them and that they had booked. A's messages talk about not being able to meet the cost of the holidays so offered more to cover those costs. This, on the face of it, doesn't show that A had no intention of providing the services promised.
- I have reviewed the receiving account statements. Whilst I can't go into detail, for data protection purposes, I can see that multiple payments across an extended period of time, relate to the activity A claimed to be making. There's only so much weight I can place on this as I can't question A or interrogate A's actions, payments or contracts etc. But it doesn't persuade me that A took Mr C's payment with intention not to provide the services promised.
- A did provide holidays and ticketed event services to people and some of those services were provided and received. Which again supports that A's intended purpose was to provide what was paid for.
- Whilst Mr C says A created fake personas and claimed to be ATOL and ABTOL licensed I haven't seen persuasive evidence that links A to these claims. But even if I had, this again doesn't go to the purpose of the payment being different to the one Mr C had thought when making the payments. It could be an indication of misrepresentation, or false or misleading advertising, used to entice consumers to use A's service. But if the holidays and services were ultimately provided or at least intended to be provided then its not enough to say this was an APP scam.
- Holidays and events can be cancelled, and money lost for a number of reasons. One of which, I accept, could be because A was operating a scam. But there are also other explanations. And in order to make a finding that Mr C should receive a refund here I'd have to be persuaded on balance, more likely than not, it was because he was the victim of an APP scam. And the evidence here on that point is not convincing.

Whilst I do not doubt that Mr C has not got what he paid for and he has suffered a loss that in and of itself is not enough to say he's been the victim of an APP scam. And he may have a claim in law against A. But here I have to decide Mr C's claim under the CRM code.

And that's not to say that with further evidence or when a Police investigation has concluded - which might provide new material evidence about A's actions and intentions, that the outcome here might be different. But I have to decide the case on the facts and information before me. And currently I'm not able to conclude there is convincing evidence that this Mr C has been the victim of an APP scam.

Mr C has mentioned the on-going police investigation would likely reveal A was committing a crime or carrying out fraud. In some instances that may be the case but there's no guarantee the police investigation would lead to a clear finding that Mr C was the victim of an APP scam. And here it's my understanding that no charges, at present, have been brought against A.

Whilst the conclusion of a police investigation would likely be helpful, I cannot keep the complaint open for an indefinite period of time, whilst A is investigated by the police. It's my role to review if Barclays considered Mr C's scam claim, correctly under the CRM code, at the point it was raised. And I'm satisfied that it did.

If new material information comes to light, at a later date, then Mr C can bring a new complaint to Barclays. But I'm satisfied, based on the available evidence to date, that I have seen and been presented with by all parties, that this is a civil dispute. And Barclay's decision under the CRM code was therefore correct.

As Barclays didn't need to consider this as an APP scam then it didn't need to go on to contact the recipient account provider. It didn't need to intervene with the payment either, and even if it had I don't think it would have made a difference given that A had provided Mr C with services previously and had no reason think that wouldn't be the case when he made these payments.

I've seen no other reason to make an award for redress, and I'm satisfied that Barclays correctly considered Mr C's claim.

Mr C has said this partner received a refund from Barclays and it can't pick and chose who it refunds. Banks make decisions to refund consumers for a variety of reasons this doesn't set a precedent in terms of our consideration of this complaint. Each case is reviewed on its own merits. Barclays decision to refund in another instance has no bearing on the outcome of this complaint.

My final decision

I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 April 2024.

Sophia Smith
Ombudsman