

The complaint

Mr H is unhappy that Barclays Bank UK PLC trading as Barclays (“Barclays”) won’t refund the money he paid for escort services.

What happened

Mr H has confirmed that he met the individuals through a website. After an agreement over costs was made, Mr H transferred two payments: one for £3,000 on 5 December 2022 and one for £5,000 on 7 December 2022. However, Mr H says the escorts did not provide what was agreed.

Our investigator did not uphold the complaint. She said there was no evidence of what service was paid for and what service was carried out and therefore she couldn’t be certain a scam had taken place. She also pointed out that the Contingent Reimbursement Model (CRM) Code doesn’t cover civil disputes.

Mr H didn’t agree, so the case has been passed to me for 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 have read all of Mr H’s his submissions. I’m not responding to every single point made but instead I’ve concentrated on what I think are the key issues material to the outcome of his complaint. I know Mr H was trying to provide further evidence, but I don’t think that evidence will make a difference here. I’ll explain why.

In deciding what’s fair and reasonable in all the circumstances of a complaint, 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’s clear that Mr H feels strongly that the escorts have tricked him. From his perspective, the escorts didn’t fulfil what he understood had been agreed. But I don’t have the power to decide any dispute between Mr H and the escorts he paid. My role is limited to looking at whether Barclays has treated Mr H fairly.

Barclays didn’t contract with Mr H for the services he requested, and I can’t hold it responsible for any breach of contract or other failings on the escorts’ part. As a starting point in law, Mr H is responsible for payments he’s instructed Barclays to make. Unfortunately, there’s little protection available to him for bank transfer payments, like these.

Before I consider whether a bank has done enough to protect its customers, I must first be satisfied that a customer has been the victim of a scam. But I don’t think we have enough information or evidence from Mr H here to safely conclude that he has been the victim of a scam.

Mr H has sent us screenshots of some text messages, but these don't clearly show what the payments made out of Mr H's Barclays account were for, or that they were made as a result of a scam. Mr H has indicated to us that the money he sent was to buy three hours of the escorts' time – but that isn't actually mentioned in any of the screen shots I've seen. It's also clear from the messages that Mr H had reduced the sum he was offering and the £4,000 each was "way less" than he'd originally agreed.

Mr H did provide some messages from a separate website chat sometime after the event (when he says he went undercover chatting to the same individual). There is reference to higher costs than Mr H paid and a 'couple of hours' is mentioned. In any event – these messages still don't confirm what services were agreed for the meeting on 7 December 2022.

I don't think I can safely conclude what happened here or that Mr H was even the victim of a scam. As I can't safely conclude that Mr H has been the victim of a scam here it wouldn't be fair to require Barclays to refund any of the payments to him.

Barclays is a signatory to the CRM Code. In certain circumstances, the CRM Code can entitle a customer to be reimbursed by banks or building societies after they've fallen victim to an APP (authorised push payment) scam. But the CRM Code is explicit that it doesn't apply to

"private civil disputes, such as where a customer has paid a legitimate supplier for goods, services ... but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier."

I've thought very carefully about this but, there is a high legal threshold or burden of proof for fraud. And there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties for a dispute to exist. Contracts can be breached and agreed goods and services not provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

An APP scam is where a customer was deceived into making a payment to another person for what they thought were legitimate purposes but turned out to be fraudulent. In this context, that would mean that the very purpose for which the escorts obtained the payments would need to be different to what Mr H believed it was for, due to dishonest deception. All things considered I simply can't safely conclude that the escorts took Mr H's money without ever having any intention of carrying out what was agreed. The evidence available to me simply isn't enough to support such a finding.

It's clear that the escorts met in the agreed meeting place and spent some time with Mr H. This suggests an intention to deliver the agreed services. The escorts may not have completed what was agreed and /or Mr H did not receive all the services he expected - but that's not enough to say this was an APP scam (and this means Mr H providing a timeline of the calls between the parties won't change the outcome here). Barclays say this was also a payee Mr H had paid before and when he first reported the matter to Barclays – he confirmed he'd known the individual for a couple of years.

Overall, I think it's reasonable for me to consider that this is a civil dispute between the parties. I accept and acknowledge that Mr H may feel he has not received the service he expected, and that the agreement was not completed, and the escorts are now uncontactable. As I've said above – I don't know exactly what was agreed or provided here – but if the agreement wasn't met – it is possible other factors ultimately meant the arrangement wasn't completed.

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

In addition, Barclays doesn't have any duty or obligation to intervene in payments that are legitimate or to protect its customers from the impact of a bad deal. So, I can't fairly criticise Barclays for not doing more when Mr H made the payments.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr H. And I am sorry if he has lost out through no fault of his own. I don't know whether he has a legitimate grievance against the escorts. But if he does - that fault doesn't lie with Barclays. And this type of dispute isn't something that the CRM Code covers.

Ultimately, based on all the information I've seen; I don't think Barclays' decision to treat this as a civil dispute was unfair or unreasonable.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 August 2024.

Kathryn Milne
Ombudsman