

The complaint

A company which I will refer to as 'B', complains that Barclays Bank UK Plc won't reimburse the money the company lost following an Authorised Push Payment (APP) scam.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in late 2022, a scammer emailed a contractor of B impersonating to be a supplier of B. They provided the bank details to where two payments to the supplier had to be made. The contractor forwarded the email to B who in turn made the payments as instructed in the email. This happened in early November 2022. The scam came to light about two weeks later when the genuine supplier contacted B for the payments.

B immediately reported the scam to their bank Barclays who in turn contacted the recipient's bank. Unfortunately, no funds reminded in the recipient's account. B asked Barclays to reimburse them the loss they incurred. Barclays did not agree. Amongst other things the bank said B ignored a Confirmation of Payee warning which advised B that the bank couldn't verify the account name on the recipient's account.

B said that they were warned by their 'supplier' in their email that some banks do not pick up the account name correctly due to the t/a (trading as an element). The 'supplier' said in the email that the bank should still allow B to make the payments despite this warning and B should click on continue as details are correct and payments will go through.

B said they had no reason to doubt the instruction as they had in the past seen similar warning for genuine payments. Also, B had no reason to doubt that the email wasn't from the genuine supplier. This was why B went ahead as instructed. B also said that it should receive reimbursement under the Contingent Reimbursement Model Code ('the CRM Code').

One of our investigators reviewed the complaint and concluded that it couldn't be upheld. They said that Barclays correctly followed B's payment instructions. The payment wasn't particularly unusual or suspicious in appearance to the bank at the time considering the company's normal account and payments activity. The payment also didn't consume all of the funds in the account – which might have been an indicator it was at risk of fraud. The payment was to a new payee, but this alone wouldn't have given Barclays much cause for concern. So, it is difficult to conclude that the bank missed an opportunity to identify that the payment was being made in relation to a scam.

The investigator also noted the Barclays took action swiftly on being advised of the scam. In addition, B isn't covered by the CRM Code as it is not a 'micro-enterprise'. Therefore, the bank isn't obliged to consider B's claim under the Code.

B asked for the case to be referred to an ombudsman. They said that it would be greatly helpful even if a decision could be made to get B a partial refund.

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.

Having done so, I agree with the Investigator, essentially for the same reasons.

As the Investigator has said, in broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. However, there are circumstances where it might be appropriate for banks to take additional steps – as for example have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud.

I have reviewed B's account statements for several months prior to the payment to the scammer, to understand the general account activity. Over the period, I see that this was an active account. There have been several similar or higher payments out of the account. As such I can't say that the payment ought to have stood out as unusual for Barclays to have intervened.

Ultimately, it is a matter for Barclays as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss which resulted from an authorised push payment fraud, I will look into the circumstances of the case and based on what I have seen, decide whether in that case the bank could have fairly and reasonably done more.

After taking all of the above into account, I can't say that the disputed payment stood out sufficiently from the prior account activity to reasonably have prompted Barclays to take further action. I'm not persuaded that there was enough here for me to find Barclays was at fault in carrying out B's payment instruction in line with its primary obligation to do so.

Further, from what I can see, there was no delay on part of Barclays in contacting the recipient's bank on being advised of the scam. Unfortunately, no funds remained in the account.

On some occasions, it's possible to consider whether a customer is covered under the Contingent Reimbursement Model Code which came into effect from 28 May 2019. However, B aren't not covered by the Code. Where the customer is a business (as in this case), the Code only applies if they were a micro-enterprise at the time the transaction took place.

For this purpose, a 'micro-enterprise' is essentially an enterprise which employs fewer than 10 persons. And if they employ fewer than 10 persons, then at least one of their annual turnover or total gross assets should not exceed €2 million.

In this case B isn't a 'micro-enterprise' as it employed more than 10 persons at the relevant time. So unfortunately, it isn't covered by the CRM Code either.

I am very sorry to see that the loss has, understandably, caused considerable distress and inconvenience. It was a sophisticated fraud, and I can see why B found the scammer's email

believable. However, what I am considering here is whether the loss to B was caused by any error or omission by the bank.

I appreciate the director's strength of feeling on this matter. They strongly feel that Barclays should at least reimburse part of their loss. But I can only make an award against a bank if that bank has done something wrong, which has led to a loss. In this case, for the reasons given I don't think that there was any error or omission on part of Barclays which led to B's loss. As such I can't ask it to refund their loss in full or in part

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 B to accept or reject my decision before 19 December 2023.

Raj Varadarajan
Ombudsman