

The complaint

B, a limited company, complains that Barclays Bank UK PLC won't refund all the money it lost when it was the victim of a scam.

What happened

In October 2022, B's director had been discussing possible investments with B's accountant, and the accountant had suggested investing in a pension scheme. B's director and the accountant exchanged a number of emails before the accountant sent over bank details for the investment and B started making payments towards it. B then made a number of payments from its Barclays account over the following weeks, totalling £200,000.

Unfortunately we now know that, at some point, scammers had intercepted the emails between B's director and the accountant and had sent B incorrect payments details for the investment. So the payments had gone to the scammers, and not to any investment.

After the scam was uncovered, B reported it to Barclays and asked it to refund the money it had lost. Barclays investigated and accepted that the payments were out of character for B so it should have carried out further checks before allowing them to go through. But it also held B partly liable as it didn't think B had done enough to check who it was paying before making the payments. So Barclays offered to refund 50% of the money B lost. B wasn't satisfied with Barclays' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought B should have had some concerns about what was going on, so didn't think they had a reasonable basis for belief that the payments were genuine. So they agreed Barclays' offer to refund 50% of the money B had lost was fair. They also recommended Barclays pay B £100 compensation for the delays in responding to its claim, which Barclays agreed to. But B disagreed with our investigator, so the complaint has been passed to me.

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 broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Barclays is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one B fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Was B vulnerable, under the CRM code?

The CRM code says that, where a customer is vulnerable, the bank should refund them in full – regardless of whether any of the exceptions to reimbursement apply. And it defines a customer as vulnerable if it would not be reasonable to expect them to have protected themselves from the particular scam they fell victim to.

B has argued that its director was suffering with a contagious disease when some of the payments were made, and so their judgment was impaired. It has also said the director had another physical condition at the time which was causing a lot of pain, and that the director was under significant stress as well. Any my intention isn't to diminish the difficulties these things can cause, and I don't underestimate the impact they had.

But, based on what I've seen of its communication with the scammer at the time, it appears B was able to carry out at least some independent checks into the investment and ask a number of questions about what was going on. So I don't think its circumstances were such that it was unable to protect itself from this particular scam.

And so I don't think B meets the definition of vulnerable from the CRM code, and I think the exclusions to reimbursement could still apply.

Did B have a reasonable basis for belief when making the payments?

Barclays has argued B didn't have a reasonable basis for belief when making the payments, because it didn't do enough to check who it was paying before making them. And while I appreciate that B has been the victim of a cruel and sophisticated scam, I do think there were a number of things about what was happening and what it was told that should have caused it significant concern.

From looking at the emails between B and its accountant and then the scammer, it doesn't appear that B was sent many details about the pension scheme it thought it was investing in. Despite asking for the terms of the pension scheme, the emails only give generic information about pensions and a link to a website before then asking B to make payments to the bank details provided. B also doesn't appear to have been sent any documents or paperwork relating to the investment or pension scheme, or anything confirming any agreement or contract it had entered into. And given the amount of money it was sending, I think it's reasonable to have expected B to get more detail and confirmation about what it was investing in before sending the money.

The emails also show B asked a number of questions about what was going on, and so it clearly had some concerns. But I don't think the answers B received should have been enough to satisfy the concerns it appears to have had. B said it couldn't find any details online about the company it was being asked to pay. But the emails just reply that it is safe and not to worry, which I don't think should have been a very reassuring response. B asks

how it is able to join a pension scheme for civil servants when it is not part of the civil service. But the emails reply that the scheme also manages investment pensions without provided any detail or evidence of this, so I don't think this should have been a reassuring response either.

B asks for an update after the first few payments have been made and is told it will receive a statement once all the payments have been made. But at this point it doesn't appear to have any confirmation from the pension scheme of what it is paying the money into or that any of it has been received. And this isn't how I would expect an investment of this size to work, so I think this should have caused B significant concern.

B is also asked to change the bank details it is sending the payments to at one point, but it isn't given a clear explanation of why the details need to change. It also then queries the details as it says they are not recognised by its bank, even after trying different versions of the account name, but is told to just continue anyway even though they are not recognised. And I think this should have caused it significant concern about where it was sending the money.

I sympathise with the position B has found itself in. And I appreciate that it thought it was speaking to its accountant and trusted they knew what they were doing. But I think there were a number of things here which should have caused it significant concern. And I don't think it did enough, or that the seemingly genuine information it was given should have been enough, to satisfy those concerns. So I think Barclays has established that B made the payments without a reasonable basis for belief that they were genuine.

Barclays has therefore established that one of the exceptions to reimbursement under the CRM code applies here, and it does not have to refund B all the money it lost.

Did Barclays meet its obligations under the CRM code?

Even though I don't think B had a reasonable basis for belief when making the payments, it may still be entitled to a refund of some of the money it lost if Barclays didn't meet its obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

Barclays has accepted that it should have identified a risk here and didn't do enough before allowing the payments to go through. So it has accepted that it didn't meet its obligations under the CRM code.

Where one of the exceptions to reimbursement applies, but a firm also didn't meet its obligations, the CRM code sets out that the customer is then entitled to a refund of 50% of the money they lost.

As Barclays has already offered to refund 50% of the money B lost, I think this is a fair and reasonable outcome to this complaint.

I also think these payments were unusual and out of character enough that, in addition to its responsibilities under the CRM code, Barclays should have identified B was potentially at risk of fraud as a result of them, and so intervened to carry out additional checks before allowing them to go through. And that, if it had done so, the scam would likely have been uncovered and the loss prevented at that point. So I think Barclays should pay interest on this refund from the date of the payments, until the date of settlement.

Did Barclays do enough to recover the money B lost?

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

Barclays's evidence shows it contacted the bank the payments were sent to within a reasonable amount of time, to ask for the money to be returned. So while unfortunately the bank the money was sent to wasn't able to return any of the money, Barclays has done all I would expect it to have done.

Customer Service

B initially reported the scam to Barclays in November 2022, but didn't receive Barclays' full response to its claim until February 2023 – which I think is a significant delay and will have caused B inconvenience.

Based on the evidence I've seen, I think an award of £100 would be fair and reasonable compensation for the inconvenience B was caused as a result of this delay. And so I think it would be fair for Barclays to pay this amount of compensation to B.

My final decision

For the reasons set out above, I uphold this complaint in part and require Barclays Bank UK PLC to:

- Refund B 50% of the money it lost as a result of this scam, if it has not already done so
- Pay 8% simple interest on this refund, from the date of the payments until the date of settlement
- Pay B £100 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 18 January 2024.

Alan Millward
Ombudsman