

## **The complaint**

A, a limited company, is seeking to recover £46,860 from Bank of Ireland (UK) Plc ("BOI"), which they lost from their account as a result of a third-party scam. A has been represented throughout by its directors, Messrs O (whom I will refer to as Mr O1 and Mr O2).

Bank of Ireland ('BOI') says it is not liable for the loss because A unwittingly authorised the payment itself — and it could not reasonably have intervened or done more to try to recoup the money from the receiving bank.

## **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 have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint. I'll explain why.

It is not in dispute that Mr O1 and Mr O2 authorised three scam payments of £312,600 on behalf of company A. They were in the process of paying for supplies for their business from three different companies, so were expecting email confirmations of the relevant account details to which they needed to pay the outstanding balances to. Between 28 March and 3 April 2017 Mr O1 and Mr O2 received emails which appeared to come from their three suppliers which included invoices and account details. All emails appeared to be from the email addresses Mr O1 and Mr O2 had been using to correspond with each of the suppliers. Supplier 1 sent over the account details following an email from Mr O1 and Mr O2 requesting them. Both Supplier 1 and 3's emails appeared in a chain of emails. All three emails included invoices and details of the work.

On 3-5 April 2017, Mr O1 and Mr O2 transferred the money to the three different accounts as per the instructions they were sent in the email. They did so via transfer in branch over three payments, after paying some funds into their account on 31 March 2017. All three payments went to new payees.

A few days after sending the payments, Mr O1 and Mr O2 went to the premises of Supplier 3 to collect the goods they believed they had paid for. It was at this point that they discovered that Supplier 3 hadn't received their payment. It then came to light that they had fallen victim to what is known as an 'invoice intercept scam'. Their email exchange had been 'hacked' and the account details provided by all three suppliers had been altered, and the original emails with the correct details had been deleted before Mr O1 or Mr O2 had even seen them.

Mr O1 and Mr O2 contacted BOI on 6 April to let them know that they had fallen victim to three email intercept scams. BOI contacted the receiving banks and were able to recover most of the losses – though they were unable to recover £46,860.05 as it no longer remained in one of the receiving accounts.

I accept that the three payments were 'authorised payments' even though Mr O1 and Mr O2 were the victims of a sophisticated scam. They completed the relevant paperwork in branch including providing the necessary security credentials to authenticate the payment. So, although they did not intend the money to go to the scammers, under the relevant regulations, and the terms and conditions of the account, company A is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider BOI should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

BOI declined to refund the remaining loss as it didn't believe it had done anything wrong as it:

- was merely carrying out Mr O1 and Mr O2's instructions to make the payment;
- had correctly followed all bank policies and protocols;
- said Mr O1 and Mr O2 were responsible for ensuring the correct payee account details were listed, and it was under no obligation to check whether the receiving bank information was correct. It also said it was for company A to carry out any due diligence, not BOI;
- the payment was not unusual or out of character as they had undergone due diligence on company A and so knew that they would be making large payments out of the account for their new business; and
- correctly engaged with the receiving banks once the fraud had been recognised, and had managed to recover a large portion of the losses but didn't think it should be liable for the remaining losses.

The first payment was for £110,000 and I'm satisfied this was suitably unusual that it should have prompted further questioning. The account was reasonably new and only used a few times before this payment was made – so the payment stands out as uncharacteristic of the account. There had not been any large payments out of this account prior to this one. It was then followed by two further payments, one on the same day and one two days later that totalled £202,600. I do understand that this account was relationship managed and the account had received a bank loan for business purposes, so there may have been an expectation that large payments were going to be made from the account. But I still think this payment should have been recognised to be at risk of fraud. And so I'm satisfied BOI ought fairly and reasonably, and as a matter of good practice, to have done more here - I think it ought to have made enquiries about the purpose of and the circumstances leading up to the payment before it processed it. I'm satisfied that if BOI had questioned Mr O1 or Mr

O2 in this particular case, the scam would have been revealed and prevented. I'll explain why.

Neither party said that BOI asked Mr O1 or Mr O2 any questions about this payment prior to processing this payment. BOI have relied on the terms and conditions requiring Mr O1 and Mr O2 to have ensured they gave them the correct account details for the receiving bank. But, as I outlined above, they do have responsibility to protect their customers from scams. Mr O1 and Mr O2 fell victim to a scam which is sadly all too common – "invoice intercept". And it's a type of scam I'm satisfied BOI ought to have been aware of at the time. Had BOI questioned Mr O1 or Mr O2, they would most likely have told BOI they were intending to pay their suppliers funds in relation to their new business. But, at this point, being aware of the prevalence of this type of scam and its common characteristics, BOI would've had the opportunity to question him further.

A particularly common feature of this type of scam is that a customer will receive an email that appears to be from the genuine business they are in contact with. This email will contain either updated payment details or the payment details provided will have been subtly changed - unbeknown to the customer, in order to redirect the payment to a fraudulent account.

This is a common scam with very particular characteristics, and I'm satisfied BOI ought fairly and reasonably to have asked Mr O1 or Mr O2 how the payment details had been communicated to him. They would've told the bank they'd been sent to them by their suppliers, by email. BOI could then have educated them about this type of scam and its key characteristics. BOI could have asked Mr O1 or Mr O2 to check before continuing with the transfer - it could've advised Mr O1 and Mr O2 to contact their suppliers, using established contact numbers, to confirm the account details were correct. Had BOI done so, I'm persuaded that this would likely have produced some doubt in Mr O1 and Mr O2's minds that the payment details may not be legitimate, and they would have contacted their suppliers before proceeding with the payments. After all, this was a significant amount of money and Mr O1 and Mr O2 may not have been aware previously that this type of scam was even possible. I'm persuaded that once informed of this, they would have taken some steps to verify the account details provided to them – had Mr O1 and Mr O2 done so, I'm persuaded that the scam would have been prevented and no loss occurred.

In summary, I'm persuaded BOI ought fairly and reasonably to have encouraged Mr O1 or Mr O2 to confirm the account details he'd been sent. His circumstances had the hallmarks of a well-known scam. And BOI should have explained the risks of scams involving the interception, altering and hacking of emails which would have prompted further action from him. In other words, if BOI had carried out further or better questioning in line with a bank's duty of care, it seems probable that Mr O1 or Mr O2 would have contacted his suppliers just to make sure everything was as it should be. At this point, the scam would have come to light. The fraud would have failed; and company A would not have lost £46,910.15.

By the time the scam came to light, there were still significant funds remaining in the beneficiary accounts. BOI did act quickly in attempting to recover the funds, and as outlined above their swift actions meant that the majority of the funds were recovered. This meant that the funds were returned to company A within a matter of days.

I have also considered whether company A should bear some responsibility for its loss. However, it is clear that up to and including the time of authorising the payment, Mr O1 and Mr O2 were both still totally in the dark and simply did not appreciate what they were doing – they thought they were making legitimate payments to their suppliers whom they had

been in regular contact with. I am satisfied there was no contributory negligence on this occasion, Mr O1 and Mr O2, on behalf of company A, were the unwitting and blameless victims of a clever fraudster. The bank was the professional in financial matters; Mr O1 and Mr O2 were the laypeople.

In the circumstances I am satisfied BOI should fairly and reasonably reimburse company A for the loss suffered without any reduction. I've considered whether interest should be paid on this figure. Our investigator recommended that 8 per cent simple interest should be paid from the date of the loss to the date of the repayment – I don't agree. I wrote to both Mr O1, Mr O2 and BOI to explain my thinking, and to give them a chance to respond. I said: *"I asked what company A did when the money was lost. They explained that they didn't need to formally borrow any money from a bank or other financial business. They had some in the account, borrowed some from friends and family so didn't have to pay any interest. However, this did mean that some of the suppliers thought they were at a bigger loss than they had told them, so didn't think they would be able to pay and walked away from the project. Other suppliers stayed, but Mr O1 and Mr O2 think they didn't complete the work to the standard expected because of the situation. Thankfully, the project has been able to continue, but it was due to be completed in June 2017, and whilst it is up and running there remain some outstanding things to complete. This means it is not as profitable as they had hoped."*

*Based on this, I cannot reasonably conclude that they were entirely deprived of the money and its uses such that I would award simple interest at the rate of 8% - they were able to make the necessary purchases to continue with their project, albeit with additional difficulties. Nor are there any additional direct financial losses such as interest on loans to consider for reimbursement.*

*But I do think that the actions of BOI in not refunding the final payment have caused inconvenience to company A. Namely:*

- the inconvenience of having to find other ways of paying their suppliers*
- the reputational damage that led some suppliers to not pursue the project, and the concerns around reputational damage even with those that did continue with it*

*I understand there have also been delays in completing the project, but its not clear that this was caused by company A not having this money – there could be many contributory factors including the pandemic, or issues with the suppliers.*

*Whilst it cannot undo any of this, I think a payment in recognition of the inconvenience caused to company A should be awarded. When considering the amount I am minded to award, I have had to consider the fact that the inconvenience was primarily caused by the scammers themselves, rather than BOI. But I do think the delay in refunding the remaining losses has added to this, and so I am minded to ask BOI to also include £500 in recognition of this."*

Both parties accepted the change in redress as a fair approach in the circumstances, without adding any further points for consideration. So, I find that the fair and reasonable conclusion of this case is for BOI to refund the remaining losses, any fees associated with the transfer of the funds, and to pay £500 in recognition of the inconvenience caused to company A.

### **My final decision**

So having considered all of the circumstances and evidence relevant to this complaint, I uphold this complaint against Bank of Ireland (UK) Plc and direct it to:

- refund company A the £46,860.05 lost as part of the scam;
- refund any fees associated with transferring the funds; *and*
- pay company A £500 in recognition of the inconvenience it was caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O1 and Mr O2, on behalf of company A, to accept or reject my decision before 30 March 2022.

Katherine Jones  
**Ombudsman**