DRN-3288464

The complaint

G, a limited company, complains that Barclays Bank UK Plc didn't do enough to prevent it being the victim of an email invoice interception scam.

G is represented in this complaint by Mr P, the company's director, and a legal representative. But for ease of reading, I'll mostly refer to G throughout my decision.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief summary here.

In February 2019 G sadly fell victim to an email interception scam and was tricked into transferring money from its account with Barclays to two accounts held with the recipient bank, Lloyds. Some of the funds were recovered and returned, but a loss of around £311,000 remains.

Following its initial investigation, Barclays concluded that it had done all it could to assist G in trying to recover its losses. Unfortunately, it could only recover around £4,000, which was returned. However, it agreed that the service it had provided wasn't up to standard. It credited G's account with £300 by way of an apology and to recognise the length of time the matter took to resolve.

G referred the complaint to our service. It believes Barclays and Lloyds are jointly responsible. A linked complaint about the actions of Lloyds is being considered under a different complaint reference. G would like a refund of the outstanding loss; an interest award to be made for the time it's been without the funds; fair compensation for the stress and worry caused; and reimbursement of the legal costs that have been incurred in bringing this complaint.

One of our Investigators considered, in isolation, G's complaint against Barclays. She recommended that the complaint should be upheld, and Barclays should pay G's full outstanding loss. She made no interest award and said the £300 award which had already been paid by Barclays for G's stress and worry was fair. Barclays accepted it could have done more, but it also argued that G itself should've done more. It made an offer to refund half of G's loss. G did not accept Barclays' offer. It maintained it was entitled to a full refund of the sum lost as a result of fraud, and Barclays should pay this and seek to get a contribution as appropriate from Lloyds. During the time our Investigator was looking into things, a further sum of around £134,000 of recovered funds was returned to G.

Both of G's complaints were passed to another Investigator. She asked Barclays whether its offer to pay half the loss still stands. Barclays clarified its offer was for half the total loss, so accounting for the recovered funds this would now be around £157,000, not the £225,000 it had previously offered. Our Investigator reinvestigated G's complaint. In short, she found that Barclays could have only prevented part of G's loss (£250,000) and that this sum (less any recovered funds) should be reduced by 50% for G's contributory negligence. Ultimately, she concluded that Barclays offer was more than fair, and she couldn't ask it to do anymore to resolve G's complaint. She also didn't uphold G's complaint against Lloyds.

G didn't agree, so the matter was reviewed by an Ombudsman colleague who has issued two provisional decisions in relation to this complaint, along with two separate provisional decisions in relation to G's complaint against Lloyds.

His most recent findings about G's complaint against Barclays are set out in his provisional decision dated 15 February 2022, in which he explained that he was intending on partially upholding G's complaint against Barclays. The approach he adopted was to arrive at G's "total preventable loss" (incorporating both Barclays and Lloyds' failures) of just over £417,000; apply a reduction to that figure of 50% in respect of G's contributory negligence giving just under £209,000; deduct the total monies Lloyds were able to retrieve which was around £138,000; and award the balance of around £70,000 against Barclays. He did not intend on making any award against Lloyds.

Barclays agreed with the Ombudsman's provisional decision and had no further points to add. G didn't agree. It made further detailed submissions. The complaint was passed to me to determine. I issued my provisional decision on 16 June 2023. I said:

"Firstly, I appreciate G would really like to know, and has on several occasions asked for an explanation of why and how different case handlers have come to different outcomes. I can absolutely see how this can have an impact on its confidence in our service's function. Having said that, the purpose of sharing preliminary assessments, before progressing to a final decision, is to help refine the issues by enabling the parties to have their say and this helps our service arrive at a fair and reasonable decision. The issues raised in this case are complex by nature. They can be approached from multiple, and sometimes competing perspectives. Understandably of all the answers given, G agrees with the answer that is most favourable to its position. But I'm not bound by the outcomes reached by our Investigators, nor those that my colleague Ombudsman indicated he was minded to reach in his provisional decisions. Ultimately, I'm required to review the facts of a case and reach my own conclusion, independently. And the purpose of my decision is to explain my determination and why I consider it to be a fair and reasonable outcome – not explain why my colleagues may have come to different conclusions.

Of course, in reaching my decision I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. But ultimately my role as an Ombudsman is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

G has made lengthy and detailed submissions in support of its complaints. I've reviewed all the material it has submitted. But I'm not going to address every single point raised here. Instead, my intended decision will concentrate on what I think are the key issues. I'd like to assure G no discourtesy is intended by this. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'll start by addressing G's request for its complaints against Barclays and Lloyds to be considered together and setting out the approach I intend on taking.

Our service's ability to investigate complaints together and apportion the burden of redress between respondents is the subject of no specific rule and only limited guidance, which can be found in the Financial Conduct Authority (FCA) Handbook at DISP 3.5.3G and DISP 3.6.3G, which say:

DISP 3.5.3G. "Where two or more complaints from one complainant relate to connected circumstances, the Ombudsman may investigate them together, but will issue separate provisional assessments and determinations in respect of each respondent."

DISP 3.6.3G. "Where a complainant makes complaints against more than one respondent in respect of connected circumstances, the Ombudsman may determine that the respondents must contribute towards the overall award in the proportion that the Ombudsman considers appropriate."

Here as the circumstances of G's complaint against Barclays are so closely linked ("connected") with its complaint against Lloyds I'm minded to agree with G that a fair approach would be to look into these complaints together; but I should then make separate decisions.

I understand G feels the Financial Ombudsman Service has jurisdiction over both respondents and could, if it chooses, decide to treat the complaints as a single merged complaint, so that the respondents are treated as a single entity. I note G also suggests that I issue a determination concerning both respondents' acts or omissions and make a "joint and severable finding against both banks", and it would then be for the respondents to choose to pay half of the award each, alternatively one of them can pay the entire award and claim back from the other an appropriate amount. But G hasn't persuaded me, nor can I see any reasonable or proper basis for me to depart from the guidance found in DISP 3.5.3G and DISP 3.6.3G. That is because normally firms are only responsible for their own acts and omissions, and under the rules which govern this service a complaint must be framed by the complainant against a firm, based on its own acts and omissions, and decided by an Ombudsman accordingly. Whilst there are some exceptions to that rule, for example where a firm accepts responsibility for an agent, appointed representative, or predecessor firm, none of these apply between the banks involved in these two linked complaints, which are separate organisations answerable only for their own acts and omissions. So, each bank is entitled to receive a decision concerning the complaint that has been made against it and I don't consider it would be appropriate, or even open to me, to deal with them in the way G suggests.

The facts

I can see on several occasions G has commented that the sequence of events has not been fully understood. In fact in response to the provisional decision issued by my colleague Ombudsman G says that he's made an error in calculating the initial sum that was lost.

G said, "whilst four payments of £50,000 (totalling £200,000) were attempted, only £100,000 was actually sent to the account at Lloyds because the third and fourth payments of £50,000 were reversed as a result of alerts by Lloyds."

I can't see that G has provided any conclusive evidence in support of its assertion. Ultimately, what it has said appears to be largely based on G's director's recollection of the events – some of which I do think is supported by the evidence. But also, some of which isn't, where I'm more persuaded by the technical evidence I've seen (such as Barclays and Lloyds' system logs and transaction data). But since much has been made about the chronology of the payments and events, I've set out below what I understand to have happened, and when, based on the evidence available to me.

All the below payments were made from G's account with Barclays to two accounts held with Lloyds. I'll refer to the recipient accounts as account 'X' and account 'Y'.

Payment Number	***Recipient Account***	***Payment Channel***	***Date***	***Time the Payment was Processed (approx.)***	***Amount***
Payment 1	*X*	*Online*	*12 February 2019*	*11.02am*	*£50,000*
Payment 2	*X*	*Mobile*	*12 February 2019*	*11.34am*	*£50,000*
Payment 3	*X*	*Online*	*13 February 2019*	*9.42am*	*£50,000*
Payment 4	*X*	*Mobile*	*13 February 2019*	*9.42am*	*£50,000*
All the above payments credited the recipient account. There was spending following receipt of the payments. Blocks weren't placed until around 12.00pm on 13 February 2019.					
Payment 5	*X*	*Mobile*	*14 February 2019*	*8.30am*	*(£50,000) Payment was returned*
Payment 6	*X*	*Online*	*14 February 2019*	*8.42am*	*(£50,000) Payment was returned*
G received an email on 14 February 2019, informing it about the change in account details. The payments which followed were made to new account details.					
Payment 7	*Y*	*Online*	*15 February 2019*	*10.28am*	*£50,000*
Payment 7 appears to have been instructed on 14 February 2019 at 12.33pm. Barclays contact notes say it spoke to G's director on 15 February 2019 at around 10.30am. Above payment was confirmed as genuine and released.					
Payment 8	*Y*	*Online*	*15 February 2019*	*10.34am*	*£50,000*
Barclays contact notes say it spoke to G again on 15 February 2019 at around 2.30pm. Blocks removed.					
Payment 9	*Y*	*Mobile*	*16 February 2019*	*9.21am*	*£50,000*
Payment 10	*Y*	*Online*	*16 February 2019*	*5.50pm*	*£50,000*
Payment 10 was instructed on 16 February 2019 at 10.02am. Barclays contact notes show blocks placed on G's online banking were removed on 16 February 2019. This would suggest G spoke to Barclays, likely in relation to the above payment, which would explain the time between instruction and execution.					
Payment 11	*Y*	*Mobile*	*17 February 2019*	*9.45am*	*£50,000*
Barclays contact notes show on 18 February 2019 it placed blocks on G's account and left a message as it had concerns about the payments made to Lloyds.					
Barclays contact notes show it spoke to G on 19 February 2019, who confirmed payments as genuine.					
Barclays contact notes show G called to report fraud on 20 February 2019. It contacts Lloyds the same day at around 4.00pm.					

Relevant law, regulation and guidance

Banks and other regulated firms must take reasonable care to establish and maintain effective systems and controls for countering the risk they might be used to further financial crime. Barclays is aware of our general position on a bank's safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider good industry practice at the time, I consider that Barclays ought to have been monitoring accounts to counter various risks; having systems in place to identify unusual transactions or other indicators that its customer was at risk of fraud; and, in some situations, making additional checks before processing payments or declining them altogether to protect its customer from possible financial harm from fraud.

In this case, Barclays agrees that it could have done more and that it missed chances to directly educate G's director about emails being intercepted and used for scam purposes. As this much seems common ground, I don't consider it to be necessary to repeat the principles, relevant rules and regulations here in much greater detail than I have above.

Could Barclays have prevented any of G's losses?

Firstly, G has disputed whether its payments were authorised on the basis that the recipient's names entered on its payment instructions did not match the names on either of the accounts that received its payments. But I'm satisfied under the Payment Services Regulations 2017 (the PSRs), the payment is considered 'authorised' and G is presumed liable for the loss in the first instance. Under the PSRs it is the 'unique identifier' that defines a payment's destination. That expression essentially means the sort code and account number, but does not include the name of the beneficiary. And Regulation 90 of the PSRs (which I've set out later in this decision) says that where a payment instruction is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each bank involved in executing the payment order with respect to the payee specified by the unique identifier.

G says Barclays failed on several counts to put in place adequate systems and protective measures to guard G from this type of fraud. One of which, is that it didn't check that its payments went to the named payee even though its systems required G to input the beneficiary's name when initiating a payment through its online banking and/or mobile banking app. G says that as a result of that requirement Barclays falsely implies this information will be transmitted to the recipient bank for verification. G considers this to be a misrepresentation, and on these grounds, it says it shouldn't be responsible for the losses it incurred. It claims that had Barclays checked to see if the names matched, G's losses would not have occurred, as the recipient accounts were not in the same names as the intended beneficiary.

I appreciate the point G makes but I don't agree that Barclays made the misrepresentation that G alleges. Simply requiring the payee's name doesn't, in my view, amount to a statement that this will be transmitted to the recipient's bank so that it can be checked and verified. So, I don't intend on upholding the complaint on that basis. Further including a box for the recipient's name is also not a contractual promise by Barclays to transmit that information to the recipient bank for verification. And if no such box had been present, thus removing any basis for the alleged misrepresentation, G would still have suffered the same loss, because G would most probably have proceeded with the payments to the same account number and sort code in any event.

I appreciate G says Barclays ought to have checked to see if the name of the beneficiary on the payment instruction matched the name of the recipient accountholder, but as I touched upon earlier, at the material time, the checking of the name given on the payment instruction against the name of the recipient accountholder was not a requirement nor was it a part of the payment process. This is further supported by the Payment Systems Regulator more recently introducing a name checking systems for UK payments referred to as confirmation of payee (CoP). If matching a payee name was already a part of the payment execution process, there wouldn't have been a need for this initiative to help combat fraud. And unfortunately, the CoP system had not been implemented at the time G's payments were made.

So taking this altogether I can't say that Barclays have acted unreasonably, or that it did anything wrong by processing and sending the payments to the account number and sort-code G had provided in its payment instructions.

Payments made to account X

In the circumstances of this complaint, I'm not persuaded payments 1 and 2 were out of character and so I don't think they ought to have attracted closer scrutiny on Barclays' part. G had in the preceding 12 months made payments of £50,000 towards "loan" and "debt" payments, so I think it was reasonable for Barclays to have not questioned these payments. I also note that G in its response of 1 March 2022 accepts that Barclays could not have done anything to stop the first payments totalling £100,000. So I won't comment further on this point.

The evidence is not clear about what exactly happened at the time payments 3 and 4 were instructed. Barclays' contact notes do not show a record of any conversation taking place with G on 13 February 2019. But G in its initial submissions said Barclays did intervene in these payments, there was interaction, no warnings were given, and the payments were processed as G confirmed them as genuine. But what G has shared, in its later submissions is different. It says the payments made on 13 February 2019 (payments 3 and 4 respectively) were "declined" and returned by Lloyds. It says the payments were re-attempted and successfully made the following day, 14 February 2019, after it soke to Barclays and the blocks placed on its account were removed. I know G feels strongly about Barclays' actions when Lloyds supposedly returned payments. I understand it feels Barclays failed to relay information properly and advise it of Lloyds' suspicions. But where the evidence as to what occurred is incomplete, inconclusive or contradictory, I must reach a decision on the balance of probabilities: in other words, what I think is most likely to have happened in light of the available evidence and the wider circumstances.

With that in mind, having considered all the information available to me, I'm satisfied payments 3 and 4 were not returned as G alleges, nor do I think that Barclays were on notice about Lloyds' concerns about the recipient account thus failing to adequately warn G at the time payments 3 and 4 were instructed. I say this because, firstly, Barclays records show these payments were sent at approximately 9.42am. The recipient account statements show them being received and credited to account X at a similar time. Lloyds themselves didn't identify and act in relation to account X until a couple of hours later, so it couldn't have put Barclays on notice about something it itself wasn't aware of. Further, these monies (£100,000) along with some funds that were recovered from payments 1 and 2 (around £34,000) were returned to Barclays about six months later, and eventually to G. So I think payments 3 and 4 weren't reversed or "declined" as G suggests. But since there is no loss in relation to payments 3 and 4, as these funds were recovered and returned, I don't consider it necessary to make a finding on whether a call did or didn't take place on 13 February 2019.

Payments 5 and 6, which were made on 14 February 2019 appear to have been reversed. The most plausible and logical answer to why these were returned seems that these were rejected by Lloyds as by that time it had blocked account X. But in any event, there is no loss to G in relation to those payments either.

So ultimately, the only loss G suffered from payments 1 to 6 was the part of payments 1 and 2 that wasn't recovered; and Barclays couldn't reasonably have been expected to prevent either of payments 1 and 2. So I don't intend to make any award against Barclays in relation to the payments which were sent to account X.

Payments made to account Y

On 15 Feb 2019 Barclays spoke to G, this was before any of its funds were sent to account Y. According to Lloyds' records, by this point it had asked Barclays to "verify the funds" in relation to some of the payments to account X. Lloyds most likely also returned two payments (payment 5 and 6) totalling £100,000 which G had sent to account X. So when that conversation took place, I think Barclays should have gone further before processing payment 7, by asking more questions in relation to how G had come to make the payments to account X that were being returned and why it was now seeking to pay sums to account Y. Any such properly directed conversation would most likely have revealed to Barclays the risk that G might be the victim of an email interception scam, or similar authorised push payment (APP) fraud. So Barclays should have provided G with warnings that were tailored to the scam that it was falling victim to.

Had it done so, I think it's most likely that G would have withdrawn its instruction to make payment 7 and made further enquiries with the intended beneficiary. And by doing so I think the scam would have quickly unravelled and come to light. So I'm currently persuaded that Barclays could have prevented all the payments to account Y, with a proper scam warning. G reported the fraud to Barclays, who informed Lloyds on 20 February 2019, at which point only a small sum remained in account Y. A total sum of £4078.85 has since been recovered and returned. So G's outstanding loss in relation to the payments it made to account Y is £245,921.15.

I've found in the linked complaint against Lloyds that with the exception of the first payment of £14,500 that left account Y, Lloyds could and should also have prevented the remainder of G's losses arising from payments it made to account Y. So, I intend to find that Barclays and Lloyds are both at fault and responsible for a loss to G of £231,421.15 and to make an overall award in respect of that part of G's losses (after next taking into account contributory negligence which I've covered below in greater detail), which I'll apportion between the two banks, so that each will have to pay G a part of it. In these circumstances, I've said that I think it would be appropriate for the award to be split equally as both Barclays and Lloyds have failed in what could and should have reasonably been expected of them as regulated firms and I can't see that either of them is more at fault than the other (albeit for different reasons) in respect of G's loss, or more the cause of it.

I've carefully considered whether this award should be reduced to reflect any contributory negligence on the part of G in relation to the making of the payments to account Y – and I think it should. I'll explain why.

G has made a number of varied submissions in relation to what it thinks about a deduction for contributory negligence – most predicated on, and in response to, the thoughts of our Investigators and my Ombudsman colleague. Broadly speaking it ranges from no deduction from any redress that is due on the grounds of contributory negligence, to disagreeing with the 50% deduction for contributory negligence stating that it is inconsistent with the deduction made by the court in Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd [2019] UKSC 50 ('Singularis') and that it should be, if at all, 25%. Even to G saying in response to the provisional decision issued by my Ombudsman colleague that it accepts that it has contributed by way of negligence to its loss, but thinks a reduction should only be made to its loss outstanding from payments it made to account X, not its loss outstanding from payments it made to account Y.

With respect, as my findings markedly differ to those of my colleagues, I will not be addressing every point G has raised about the misapplication of contributory negligence. Instead, I will focus on my findings and explaining the reasons for why I think the award should be reduced and to what extent.

Firstly, the facts of this case are totally different to those in the Singularis case – so I don't agree that a direct parallel can be drawn. The purpose in citing this legal case is to highlight that there are circumstances where it might be appropriate to make a reduction on account of a claimant's (here complainant's) contributory negligence.

I note that apportionment of liability for contributory negligence in such circumstances may not always be confined to simply examining the blameworthiness of G but can also depend on other factors including the conduct of the respondents and the importance of their acts or omissions in causing the loss. But an Ombudsman's award of financial redress must be in an amount that he/she "considers fair compensation for the loss or damage ... suffered by the complainant" (s.229(2) FSMA 2000). So to be absolutely clear, here the award I intend on making is what I consider to be fair, and not applying the law (which, anyway, couldn't apply here because I am not considering two legal claims, let alone two legal claims based upon breaches of a legal duty of care).

With that being said, I agree with my colleague Ombudsman that I think it's reasonable to have higher expectations of a micro-enterprise engaged in activity for commercial gain, such as G, compared to a consumer. And as a company which fairly regularly deals with movements of large sums of money, I also agree that its director can reasonably be expected to educate himself as to the risks he might come across in the course of his business (including scams). G says its director ought to be viewed more as a consumer or a layperson and has made submissions in support of this. I've considered everything G has shared (throughout the time the case has been with our service), along with information that is available publicly about G, and I think it's fair that the expectations on G as a limited company (including its director) are slightly higher.

G cannot provide a copy of the email it received from the fraudsters asking for the payment to be made to different account details. In its original submission G said it:

"… had received, and believed, an email purportedly from [investment firm] (but in fact sent by the fraudsters) asserting that the original account was "full" and that future funds should be sent to a different account, for which details were provided."

It then went onto say:

"… Barclays did not warn G that an email stating that a designated bank account was "full" was suspicious, and that it could have been an attempt by fraudsters to continue their fraud using a new account in circumstances where the account which the fraudsters had hitherto been using had fallen under suspicion from Lloyds on the previous day (14 February 2019), to the extent that Lloyds has returned payments to that account."

I appreciate it has subsequently explained that G was given a plausible explanation for the change in the beneficiary account details, namely that the first investment opportunity had been fully subscribed and another had opened up, requiring the use of a different account. But this was in response to our Investigator and Ombudsman referring to this evidence as part of their reasoning for making a deduction for contributory negligence. And if it were true that "the investment opportunity was full (i.e. fully subscribed) and that a new investment opportunity of a similar nature had opened but required a different bank account", given the nature of the investment G was partaking in I'd reasonably have expected it to have been issued with a revised contract/agreement and as a minimum a new loan note with the terms of the new investment opportunity. G hasn't provided any such evidence in support of its claim.

In the absence of the email G received containing the new account details or any evidence which might corroborate the explanation G has more recently provided, I'm more persuaded by G's initial submissions as to the reason for the change of account. And I think it's most likely that in response to payments 5 and 6 to account X being returned G was simply told that the original account was "full" and that future funds should be directed to new account details. And even if G understood this to be that the subscription was "full" that still wouldn't have explained why payments were returned by Lloyds – as I'd expect G to know that a bank account would not get full.

I think it's reasonable to expect an experienced business, like G, who regularly invests in this way to realise that something isn't right when: unexpectedly being told an account is "full"; payments were returned by the recipient bank without explanation; and being questioned by Barclays about the nature of the payments. I think altogether there was enough going on that G reasonably ought to have had concerns at the time of instructing the payments to account Y and it should have looked into the reason for the change of account details before making these payments. I think any such reasonable investigation by G would most likely have led to it uncovering the fraud.

So I must have regard for G's share of responsibility in the loss it has suffered. And whilst I've held G to a slightly higher level due to the nature of its business and the specific circumstances of this scam, I do acknowledge that there remains an imbalance in knowledge and experience between G and the banks. So in deciding how much the reduction for G's negligence should be, I have taken into account the differing levels of experience between G and the banks as well as the banks obligation to prevent fraud and scams. So taking all of this together I think in the circumstances of this case a reduction of 25% for G's share in the responsibility for the losses arising from account Y is fair.

I'm aware that it could be argued that it would be fairer to apply a different reduction to a scenario where one bank has failed to prevent a loss compared to a scenario where two banks have failed to prevent a loss. I've thought about this carefully and on the facts, I don't think they differ sufficiently to award a different reduction for contributory negligence in respect of one payment leaving account Y. In reaching my intended decision I've taken into account as relevant law the fact that has been held that the Law Reform (Contributory Negligence) Act 1945 contemplates that, if the claimant's own fault was one of the causes of a loss, the damages are to be reduced by the self-same amount as against any of the other parties whose fault was a cause, whether the claimant sues one or more of them.

So, the total sum I intend on directing Barclays to pay G for losses arising from payments sent to account Y is £97,657.93. This figure is derived in the following way:

The outstanding loss from account Y is £245,921.15. That being £250,000 which was sent to account Y between 15 and 17 February 2019 minus funds recovered from account Y totalling £4078.85.

Barclays alone (in the context of respondents) could've prevented the loss of £14,500 from account Y. After a 25% reduction for contributory negligence, a sum of £10,875 is payable by Barclays.

And both Barclays and Lloyds could've prevented the remaining loss of £231,421.15. After a 25% reduction for contributory negligence, a sum of £173,565.86 is payable and I'm intending to apportion that as a 50/50 split between Barclays and Lloyds with each paying £86,782.93.

My finding in relation to interest awards on sums awarded and recovered funds is covered further on.

Assisting G with the recovery of its losses

Part of G's complaint is that Barclays hasn't satisfactorily assisted it in the recovery of its losses.

Regulation 90 of the PSRs says the following:

"90.— Incorrect unique identifiers

(1) Where a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier.

(2) Where the unique identifier provided by the payment service user is incorrect, the payment service provider is not liable under regulation 91 or 92 for non-execution or defective execution of the payment transaction, but the payment service provider—

(a) must make reasonable efforts to recover the funds involved in the payment transaction; and
(b) may, if agreed in the framework contract, charge the payment service user for any such recovery.

(3) The payee's payment service provider must co-operate with the payer's payment service provider in its efforts to recover the funds, in particular by providing to the payer's payment service provider all relevant information for the collection of funds.

(4) If the payer's payment service provider is unable to recover the funds it must, on receipt of a written request, provide to the payer all available relevant information in order for the payer to claim repayment of the funds.

(5) Where the payment service user provides information additional to that specified in regulation 43(2)(a) (information required prior to the conclusion of a single payment service contract) or paragraph 2(b) of Schedule 4 (prior general information for framework contracts), the payment service provider is liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user."

In the circumstances of this complaint, I'm satisfied that G entered incorrect unique identifiers for the purposes of triggering the banks' respective duties under Regulations 90(2) to (4). I say this because G was due to make payments to invest in a genuine opportunity. The payment had been agreed and was expected. The emails between G and the firm it was dealing with were intercepted, and details changed. So here I consider the investment firm's legitimate bank details to be the correct unique identifier. I say this because – but for the interception and changing of account details – G would've sent the payments to the investment firm's legitimate details.

I'm aware and have taken into consideration that data controllers such as Barclays are required to comply with the principles under the Data Protection Act 2018 (DPA 2018) and UK's General Data Protection Regulation (UK GDPR). And if they do not have a lawful basis for holding and processing personal data (which includes disclosing that information to a third party) they will be in breach of DPA 2018 and UK GDPR, and any individual whose privacy rights have been affected may have a number of rights against them. Banks also owe their customers contractual duties of confidentiality. However, individual privacy rights are not absolute, and the organisation holding the data may have a lawful basis for providing it to a third party in a way that would otherwise be unlawful if the above exemption did not apply. Similarly, duties of confidentiality are subject to qualifications and don't apply where the law requires disclosure of the relevant information.

The regulations set out above require disclosure of data, so even where the relevant information contains data relating to individuals Barclays will have a lawful basis for disclosure – under regulation 90(4) which says if Barclays has been unable to recover the funds, as is the case here (and will likely continue to be the case as I intend on only partially upholding G's complaints), on receipt of written request from G, it must provide all available relevant information in order for G to claim repayment of its loss.

I have seen that a written request for information to assist the claimant (here G) in a court case was contained in G's complaint form, which was shared with Barclays on 16 March 2020. I can't see that Barclays have ever tried to obtain any information from Lloyds. So I intend on directing Barclays, to request this from Lloyds, and upon receipt share with G as required under regulation 90(4) of the PSRs which says: "… on receipt of a written request, provide to the payer all available relevant information in order for the payer to claim repayment of the funds". If there is a dispute as to whether Barclays has fulfilled its obligation under the direction, G will need to go to court and argue that our direction/regulation 90(4) entitles it to more than it has been given.

I think it's important I also highlight that payee bank accounts in fraud cases could be in hands of dangerous criminals/individuals with possible links to organised crime – or indeed a vulnerable person/innocent party or someone who themselves are also a victim. So, if on receipt of this information, G intends to contact the payee, I strongly suggest it seeks advice – from the police or a solicitor – before attempting recovery of funds and leaves any practical steps which need to be taken to the appropriate authorities.

Interest, compensation for distress and inconvenience and reimbursement of legal costs

Given my finding above that Barclays should refund G for some of the loss it has suffered, I next need to consider what interest (if any) Barclays should add to this amount to compensate G for the period it was without these funds. Our usual approach where the cost of being deprived of the funds is intangible, is to apply a simple interest rate of 8% broadly to reflect the opportunity cost of being without the funds.

The previous Ombudsman thought no provision for interest was required. He said: "it seems that G were able to borrow the funds (at no cost to itself) to meet its investment obligations. As such I'm not persuaded that G have suffered a loss by being without those funds and I don't deem an interest award to be appropriate."

In response to which, G points out that it is contrary to the practice of our service not to include an award of interest where it is established that a loss has been suffered.

I've considered the evidence afresh and I don't think that I can reasonably conclude that G suffered no loss because of the deprivation of the funds I intend on awarding G for the period up to acceptance (if it chooses to) of my final decision or resulting from not having access to the recovered funds as soon as it ought to have.

G has been without what I consider a significant sum of money for long periods of time. I cannot be certain about the precise cost to G of being deprived of this money because it might have used the funds in a variety of ways. The nature of G's business is to invest when an opportunity arises. So, on balance, I'm satisfied that it would have done something with those funds. And if it had invested the money elsewhere, now I think several years on, it would be difficult to say with any certainty what exactly G would have invested in over time (potentially with any number of reinvestments of proceeds) and the return it would have realistically achieved. So, without any compelling reason to depart from our usual approach, I consider it fair and reasonable that Barclays pays G simple interest at 8% p.a. on the amount to be refunded.

In addition, Lloyds recovered and returned a sum of £134,658.76 to Barclays on 13 August 2019. But Barclays didn't return these funds to G until 15 February 2021, and after our services' involvement. I'm satisfied the delay was avoidable and but for Barclays' failure to return this money, G most likely would've made use of those funds, so I consider it to be fair and reasonable that Barclays pays simple interest at 8% p.a. on the sum of £134,658.76 recovered from account X for the duration of time between Lloyds returning the funds to Barclays and these being received by G.

I also note that when Barclays sent notification of fraud to Lloyds, it informed Barclays that some of the money which had been received into account Y had been paid away to an account held by them. As the vast majority of the monies recovered (just over £4000 of the £4078.85) were from one of Barclays own accounts (so arguably it could've recovered and returned it sooner); it having the customer and contractual relationship with G; and taking into account it could've prevented all the losses arising from funds sent to account Y. I think the simplest and fairest way (without getting into complex redress calculations for interest pertaining to a small sum of around £70) is to ask Barclays to pay G 8% simple interest p.a. on the total sum of £4078.85 for the period of time it was without those funds.

G is a distinct and separate legal entity. It is the eligible complainant. So I can only consider the impact on the entity itself, rather than the people bringing its complaint. And as G isn't an individual person, it can't experience distress, pain or suffering. But it can experience inconvenience and damage to its reputation. So for completeness I've considered whether it would be fair and reasonable to direct Barclays to pay G more than the £300 compensatory award it has already paid for delays, poor service and lack of communication. G's submissions have not commented on such matters in any great detail. With that in mind, I've thought about the overall impact of Barclays wrongdoings on G and whether it can safely be concluded that these caused further inconvenience or damage to its reputation where I think it would be fair to make a direction that awards G additional compensation. But from what I've seen I don't think it did. So I won't be asking Barclays to pay anything more than the £300 it has already paid.

And finally, we rarely think it necessary for professional costs to be incurred to raise a complaint with a regulated financial business or to bring a complaint to this service. Here, appointing a professional was something G has chosen to do, rather than a case of where it was a necessity. So I do not intend on asking Barclays to reimburse G for the legal costs it has incurred in bringing this complaint.

My provisional decision

For the reasons outlined above, but subject to any further information I receive from either G or Barclays Bank Plc I'm intending to uphold this complaint in part.

To put things right I intend to direct Barclays Bank Plc to:

- *Pay G, £97,657.93 (losses from account Y) together with 8% simple interest p.a. Interest should be paid from the mid-date of the payments that Barclays could have prevented, 16 February 2019, until the date of settlement.*

- *Pay G, 8% simple interest p.a. on the total sum of the funds which were recovered from account Y. Interest should be paid for the period between the mid-date of the payments that Barclays could have prevented, 16 February 2019, and the date(s) these funds were returned to G.*

- *Pay G, 8% simple interest p.a. on the total sum of the funds recovered from account X for the period between Lloyds returning those to Barclays and it returning these to G.*

- *Within 28 days of acceptance of the decision require Lloyds to provide it with all relevant information for the collection of G's lost funds; and within 56 days of acceptance of the decision provide G all available relevant information in order for G to claim repayment of the funds."*

I asked both parties to send me any further comments and/or information they want me to consider.

Barclays responded to say it has reviewed the case and it agrees with the recommendation as set out in my provisional decision.

G responded to say it accepts my provisional decision.

So now that both sides have had an opportunity to comment, I can go ahead with my final 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.

Both parties have accepted my provisional decision and have not put forward any new evidence, comments or arguments for me to consider. I therefore see no reason to depart from the findings I made in my provisional decision which I have quoted above.

Putting things right

To put things right Barclays Bank Plc must take the following actions:

- Pay G, £97,657.93 (losses from account Y) together with 8% simple interest p.a. Interest should be paid from the mid-date of the payments that Barclays could have prevented, 16 February 2019, until the date of settlement.

- Pay G, 8% simple interest p.a. on the total sum of the funds which were recovered from account Y. Interest should be paid for the period between the mid-date of the payments that Barclays could have prevented, 16 February 2019, and the date(s) these funds were returned to G.

- Pay G, 8% simple interest p.a. on the total sum of the funds recovered from account X for the period between Lloyds returning those to Barclays and it returning these to G.

- Within 28 days of acceptance of the decision require Lloyds to provide it with all relevant information for the collection of G's lost funds; and within 56 days of acceptance of the decision provide G all available relevant information in order for G to claim repayment of the funds.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part and direct Barclays Bank UK PLC to take the actions outlined in the "putting things right" section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 14 August 2023.

Sonal Matharu
Ombudsman