

## **The complaint**

B, a limited company, complains Barclays Bank Plc treated it unfairly in relation to its merchant services agreement.

B is represented, but for ease I'll refer to the actions of B's director and representatives collectively as B's actions.

## **What happened**

In January 2020 Barclays contacted B to say there had been an alert from Visa about a security issue – the concern was that card details entered on B's website were later being used for fraudulent transactions. Barclays explained there was a need for urgent action, including the need to engage a Payment Card Industry ("PCI") Forensic Investigator ("PFI").

A PFI wasn't engaged, and B started using a different merchant services provider. Barclays then, around mid-2020, told B it needed to pay a penalty from Visa of about €67,000 and the agreement between them would be terminated. Barclays withheld the money B held with it (about £23,000) and asked B to arrange to pay it the rest.

B considers Barclays has treated it unfairly. It says, in summary, that:

- B didn't take action initially because it was suspicious about the emails Barclays sent it;
- Barclays hasn't shown B did anything wrong;
- Barclays should have notified B there was a problem much sooner;
- Barclays shouldn't have withheld its money; and
- B is a small business, and this matter could affect its viability.

## **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.

B entered into a merchant services agreement with Barclays in 2018. Barclays has shown the agreement between the parties included the following provision:

*"If we or any affiliate are passed any fees (including registration fees if they apply), fines, costs, claims or liabilities by any regulatory body (including a scheme) arising out of our relationship with you or as a result of you breaking this agreement, we will request that you, and you will have to, pay them and refund us the amount due when we request."*

It has also shown guidance about the importance of Payment Card Industry Security Standard ("PCI DSS") requirements. The following guidance was included:

*"What could happen if you are not PCI DSS complaint?"*

*If customer cardholder data, which you or your third parties have handles is proven to have*

*been compromised, stolen, or used fraudulently your business is liable to substantial associated costs e.g. (but not limited to) forensic investigations, Card Scheme compromise fines, issuer losses, and reputational damage.*

*Additionally, the Card Schemes may decide to levy further fines for non-compliance and storage of sensitive authentication data. Barclaycard may also impose non-compliance charges on merchants that are not PCI DSS compliant.”*

Provisions and information such as the above are common in merchant services agreements and I find them clear, fair and not misleading. I’m therefore satisfied Barclays did enough to make B aware of the risks involved in accepting payments from cardholders.

Barclays contacted B in January 2020. This was because of an alert from Visa, which it received the day before it contacted B. Until Barclays received this alert, it didn’t know there was an issue. So I’m not persuaded Barclays could have notified B sooner.

B says it thought Barclays’ emails were suspicious. I don’t find that’s the case. The initial email specifically addressed how it could be perceived as such and set out verification advice. Nor did B respond to the emails in a way which would demonstrate suspicion. I note it wasn’t long before B was communicating with Barclays, so its alleged suspicions were short lived. And I can see Barclays offered to arrange calls and did send a headed letter. It follows I’m not persuaded Barclays’ communication methods had a material bearing on this matter.

Having reviewed the email correspondence between the parties I find Barclays was proactive, responsive and helpful. It made clear what was needed, followed things up and made B aware of the importance of acting. For example, in February 2020 Barclays explained the penalty from Visa would likely be about €63,000 and that this could possibly be reduced if a PFI was engaged.

B says Barclays hasn’t shown it did anything wrong. I haven’t seen anything to suggest Barclays has said it has. Barclays was made aware by Visa of a security concern – that card details used on B’s website had likely been compromised. This required an investigation, which is why B was told it needed to engage a PFI. By not doing this, Barclays didn’t have legitimate reasons to challenge Visa. And while I accept B questions whether the security concern was justified, it was Visa which demanded action and I’m satisfied Barclays did what it reasonably could to show B, through data, why Visa had concerns.

B is understandably worried about having to pay such a large penalty. However, Visa charged the penalty to Barclays because of a security concern on B’s website and because, it seems, there wasn’t enough done to show either there wasn’t a security issue, or the impact of the security issue had been mitigated. I can’t fairly conclude Barclays is responsible for the penalty being as large as it is given it didn’t calculate it, and it did what it reasonably could to encourage B to take steps to address the matter, and B didn’t take them.

As set out in the information I’ve referenced above, Barclays can pass on costs such as Visa’s penalty to B. That, combined with the specific circumstances as set out above, means I’m satisfied it was fair and reasonable for Barclays to ask B to pay it back. And I find it was fair and reasonable for Barclays to withhold the money B held with it in part payment.

I sympathise with the situation B finds itself in. But its financial position isn’t a relevant consideration. What I must decide is whether Barclays has treated it fair and reasonably. And for the reasons set out above, I find it has.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 15 February 2023.

James Langford  
**Ombudsman**