

The complaint

P, a limited company, complains that Barclays Bank UK Plc unreasonably declined to refund money lost to a scam. It would like the funds refunded to them.

What happened

P has appointed representatives, but for ease of reading in this decision I'll refer only to P.

P is a property developer that holds accounts with Barclays. In June 2022 it reported to the bank that they had been victim of an email intercept scam. It had made a payment to what was thought to be a subcontractor who had recently sent updated payment details. P had then made a payment of £34,140.26.

Barclays were able to recover £143.92, which was returned to P. But the bank declined to refund anything further – they said the size of P's business meant it wasn't covered by the Contingent Reimbursement Scheme (CRM) Code for reimbursement from scams. As the payment wasn't out of character for P's account, the bank didn't think it should have triggered any additional checks.

Unhappy with this P referred its complaint to our service. One of our investigators looked into what happened, and initially didn't think Barclays needed to do anything further, reasoning that P had authorised the payment and didn't see any reason the bank would question it.

However, the investigator later revised their position, saying that upon review of P's balance sheet it would be considered a microenterprise, and as such in scope of the CRM. On that basis they reassessed the claim under the Code. In summary they thought that the claim should succeed – they did not feel Barclays had provided effective warnings to P about the payment, and about a negative match in the account name.

The investigator felt P had no reason to doubt the payment instruction was genuine and had followed their internal processes correctly. They asked Barclays to refund the outstanding amount; and pay 8% simple interest on this amount from the date the claim was declined to the date it was paid.

Barclays rejected this outcome – arguing that payments into P's account showed that the turnover was too high to be a microenterprise, so couldn't be covered under the CRM code. The investigator found that this income was from a loan facility, and they didn't see that loan credits would count towards the turnover of the business. The bank still disagreed, and as no agreement could be reached the complaint has been passed to me to decide.

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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to

take into account relevant: law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The starting position in the relevant regulations – the Payment Services Regulation 2017 (PSRs) and the terms of P's account is that they have authorised the payments and are responsible for the transaction carried out.

But where the customer made the payment because of the actions of a fraudster it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Barclays should have reimbursed P in line with the provisions of the CRM Code it has signed up to and whether it ought to have done more to protect P from the possibility of financial harm from fraud.

P has asked for redress under this code. This allows for the refund of losses to authorised push payments (APP) fraud to eligible victims, subject to certain exceptions. Barclays' main contention is that P aren't eligible under the code.

I think there are several key questions for me to answer here, which I shall take in turn.

Is P covered by the CRM Code?

There doesn't seem to be any dispute that P is the victim of APP fraud – so the key question in deciding whether the CRM Code covers them is whether they are a microenterprise or not.

The CRM Code refers to the definition of microenterprise from the PSRs, which in turn refers to the Annex to Recommendation 2003/361/EC, of 6 May 2003. Article 2 of this defines a microenterprise that employs fewer than 10 people and whose annual turnover and/or balance sheet total does not exceed EUR 2 million.

When considering this I've noted that P also has linked enterprises as well, which share the same directors and have shareholders voting rights over P. So, I have taken these enterprises into account alongside the figures of P.

I've seen nothing to suggest P employed 10 or more people at the time, or in the two years prior to the complaint. So, I'm satisfied they meet the headcount criteria. From P's balance sheet it's clear it has assets of over EUR 2 million – but the test is not exceeding this amount in assets and/or turnover.

P has argued that it doesn't have any turnover and has submitted the accounts and tax returns for the reference year, and the two years previous. These figures show that the turnover figure is low, with effectively no profit. This ties in with the publicly available information on Companies House. I would think it unlikely that P would file incorrect accounts with HMRC, given the consequences of doing so.

Barclays have argued that P's accounts were clearly receiving over EUR 2 million in income – for example receiving over GBP 3 million in 2022 alone. But I also note from the account statements that most of this income is from a single lending company. P has provided a statement with this lender showing this is borrowing.

For the purposes of deciding whether P is a microenterprise, turnover would be income from the provision of goods or services. I've seen nothing in any guidance provided about what constitutes a microenterprise to suggest that income from lending should apply towards turnover. I'm not persuaded that the borrowing P has taken out counts towards the turnover.

Barclays have also queried how P are receiving lending if there was no turnover. The loan statements don't show any repayments to the sums borrowed yet – and based on the nature of the business I don't think it's unreasonable that repayment is deferred to the completion of development.

I'm satisfied that at the time of the complaint P had a turnover of less than EUR 2 million. Therefore, taking in to account the headcount criteria as well it would count as a microenterprise for the purposes of the PSRs. The provisions of the CRM should apply.

Should P receive a refund under the CRM Code?

Under the CRM Code it's generally expected that the bank should refund their customer if they've been the victim of an APP scam. But this is also subject to several exceptions where they may decide not to reimburse the full losses.

Barclays haven't commented on any of these exceptions – as the bank's position has been that P simply isn't covered by the code. And I have disagreed with them on this point. But to be fair to them I have considered the exceptions I see as relevant here.

Did Barclays meet its obligations under the CRM Code? And did P ignore an effective warning?

The CRM Code says that effective warnings should be risk based and, where possible, tailored to the APP scam risk indicators and any specific APP scam types identified through the user interface with which the customer is initiating the payment instructions.

Barclays did identify a risk with the payment P made and provided a warning, based on what P identified as the purpose of the payment.

Barclays have provided screenshots of the warnings would have seen before the payment was made. One of them warns P that it is about to make a payment to a new recipient. But I'm not persuaded this would be particularly impactful in the circumstances. The directors of P were under the impression that they were making a payment to a recipient they had paid before – these were new accounts details certainly, but the recipient was a company they had dealt with previously.

The message also warns of an unexpected invoice – but this was an invoice that was expected. There is mention of an updated invoice with new account details, but I'm not persuaded this would have been impactful, as it doesn't explain the nature of these scams. I'm also not minded that this will have registered with P in the same way as describing how an email intercept scam works or how to spot one.

In this case I'm not persuaded that the warnings presented by Barclays were effective – and on this basis I can't say P ignored an effective warning either.

Did P make the payments without a reasonable basis for belief?

I need to consider not just whether P believed it was sending money to a subcontractor, but whether it was reasonable for it to do so.

I'm satisfied that P had a reasonable basis for belief that the payment they were making was for a legitimate invoice. The invoice appeared to come from a known contractor and was expected. The emails are generally in the same tone and style as the legitimate emails from the contractor, and the fraudulent invoice is very similar to the legitimate invoices. And the explanation given by the fraudster for the change in bank details wouldn't have caused concern. So, I don't consider Barclays can rely on this exception for declining to refund P.

There was a mismatch in the name of the account when it went through the Confirmation of Payee system. The warning that P would have seen says "beneficiary name validation", but I don't think this makes it clear that the account names didn't match. The directors of P have also commented that it wasn't uncommon for them to receive this warning. I'm not persuaded this warning should have had a significant impact in their decision to proceed with the payment or would have given P concern that the reason for making payment wasn't legitimate.

Did P follow its own internal procedure for validating the payment correctly?

Lastly, I've considered whether P followed its processes for approving the payment. The process P has described involved the directors checking the payment details were accurate before making payment – rather than the nature of the payment. I'm not persuaded here there was a failure in P's internal processes, or that they should have picked up on the email intercept themselves at this point.

Overall, I don't consider that any of the exceptions in the CRM Code apply here. I can't see a reason for Barclays to decline to refund P's remaining losses.

Did Barclays do enough to prevent the payment, or recover the funds?

Considering my conclusions above, it is not necessary in this case to consider whether Barclays should have done more to prevent the payment being made. But for completeness, I agree with the bank that the value and nature of this payment wouldn't have been so out of character for the usual activity on the account that the bank should have intervened and asked more questions about it.

I've also considered if the bank exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers.

The scam payment was made 24 June 2022 and the scam was reported later on the same day. I'm uncertain exactly when Barclays contacted the receiving bank but know it was told only £143.92 remained. So even if there was a delay (and I have no reason to believe there was) I don't consider it would make a difference in this case as scammers usually remove funds rapidly.

My final decision

My final decision is that I uphold this complaint, and Barclays Bank UK Plc must:

- Refund the remaining losses of £33,996.34 to P
- Add 8% simple interest per annum to this amount from the date the claim was declined to the date of settlement

If Barclays consider that they are required by HMRC to deduct tax from this interest amount, they should tell P how much has been deducted. They should also provide P with a tax deductions certificate if P asks for one, so it can reclaim the tax from HMRC if eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 7 June 2024.

Thom Bennett
Ombudsman