

The complaint

L, a limited company, complains that Barclays Bank UK Plc have unreasonably declined to refund transactions they say they didn't agree to. They'd like the bank to refund them.

L are represented by their directors, Mr and Mrs G.

What happened

The background to this complaint is well known to both parties, so I will cover it off only briefly here.

In August 2023 a staff member of L attempted to login to the Barclays online system, and they got a message saying there was a security update. They were told that someone from Barclays would be in contact with them and received a call. During this conversation they downloaded some software, and the screen went blank. They were then directed to enter their smart card and PIN into a Say What You Sign (SWYS) device on seven occasions.

L discovered that the call had been a ruse, and a fraudster had attempted to make 14 individual payments, in six batches and one individual payment, which totalled £535,799. Some transactions had been prevented by Barclays, but £426,316 had been sent from four of L's accounts. L contacted the bank to say they hadn't agreed to these transactions.

Barclays were able to recover £73,101.05 in total, but L was still at a loss of £355,604.83. However, they declined to refund the remaining losses, saying that by using the smart card and SWYS device it should have been clear that payments would be made. They felt that L had consented to the payments, so didn't feel there was an obligation on them to provide a refund. They also felt that the staff member at L had been grossly negligent by allowing access to their accounts. But they accepted there had been delays and a lack of communication in the complaints process and offered £200 compensation.

Dissatisfied with this Mr G referred L's complaint to our service. One of our investigators thought the complaint should succeed. He reasoned that because the staff member hadn't completed the whole form and procedure to authorise the payment, then it wouldn't be reasonable to treat the payments as authorised.

The investigator suggested Barclays refund the remaining loss and add 8% simple interest to this amount for the period S was without the funds.

Mrs G accepted this on behalf of L. Barclays however disagreed, saying in summary:

- By entering the PIN into the SWYS device, under the terms of the account and the relevant regulations the payments should be considered authorised.
- Their Digital Channel Security User Guide outlined how the smart card and SWYS device worked, and also provided warnings of common scam scenarios, and not to provide remote access to someone claiming to be from Barclays.
- This staff member had logged in to the online system often, so will have been shown fraud and scam warnings, and had to acknowledge reading them. These will have included warnings about not allowing remote access for people claiming to be from

- Barclays.
- The SWYS device has a screen which would have shown that the staff member was agreeing to payments being made.
- They felt by ignoring the warnings displayed on the payment systems that the staff member had been grossly negligent.
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This didn't change the investigator's mind. Barclays subsequently made an offer to refund 50% of the remaining loss - £176,577.47, plus a respective interest award, but this was declined by L.

The complaint was passed to me to decide. After review of the file, I felt the offer from Barclays was fair. I issued my provisional decision that said:

Authorisation of payments

The relevant law here is the Payment Services Regulations 2017 (PSRs) – these set out what is needed for a payment to be authorised and who has liability for disputed payments in different situations. With some exceptions, the starting point is that the payer is responsible for authorised payments, and the bank is responsible for unauthorised payments. L says their employee didn't authorise the payments, but Barclays has concluded that they did, and so I'll address this point first.

I've also considered the common law principle of apparent authority which protects the expectations of a third party who has reasonably relied on a representation by the principal that an agent has authority to act on their behalf.

It isn't in dispute that the fraudster tricked the employee of L into allowing remote access to the Barclays.net system, likely through the use of a spoof version of the real site. And it seems more likely than not the SWYS device was used to submit several payment requests. The technical data supplied by Barclays confirms this is the case. So, L is the victim of a scam here.

I'm satisfied that the payment requests were correctly authenticated using genuine login details and completed using the SWYS device. Under the PSRs for a payment to be authorised, it must be consented to by an authorised individual, or someone acting on their behalf. This consent needs to be "given in the form, and in accordance with the procedure".

In practice this is outlined in the terms of the account. Here the most applicable term is:

to make a payment or withdrawal from your account, you need to give us authorisation. You can do this in several ways...

Log onto Online Banking, the Barclays app or any other applicable Electronic Banking Service we provide using your security details. Follow the instructions to complete the payment.

It's accepted that the fraudster set up the payment instruction in the Barclays.net system, using L's legitimate credentials.

I've also considered whether the payments could be considered authorised on the basis that the employee confirmed the payment instructions using the SWYS device. There is some dispute around what information the device showed each time. Barclays have said it would have asked the employee to submit the payment transaction. But the employee at L believed they were only agreeing to logins.

I think it's more likely that not the device would have presented a screen asking them to

submit a payment request, along with a date and time. This is what's displayed when a payment transaction is being submitted, which was what was happening. And I've seen nothing to suggest the fraudster could have remotely manipulated what the SWYS was displaying. The employee would then need to physically press "OK" on the device to confirm the submission on the payment transaction.

I'm persuaded that it's reasonable for Barclays to rely on this confirmation as consent by L to process the payment instructions. Essentially, I'm satisfied the payments were authorised and I don't see that under the PSRs there is an obligation on Barclays to refund L

However, I've gone on to consider what's fair and reasonable in all the circumstances of the complaint.

Did Barclays do enough to recover the funds?

Barclays were able to recover £73,101.05 in total from various receiving banks.

From the evidence I've seen I'm satisfied that Barclays contacted the receiving banks in a reasonable timeframe after they were notified with the fraud. I've seen nothing to suggest that there were any unreasonable delays caused by Barclays. Unfortunately, it seems unlikely there will be any further funds returned. But the evidence suggests Barclays made reasonable efforts to recover L's funds.

Should Barclays reasonably be responsible for refunding L?

In general, the starting position in law is that Barclays would be expected to process payments and withdrawals that their customer authorises them to make, in accordance with the PSRs and the terms of the account. But there are also legal and regulatory expectations that the bank will monitor accounts and payment activity to look for signs their customers may be falling victim to financial harm – such as fraud.

There is a balance to be struck between investigating significant numbers of transactions in details and allowing a customer to transact freely. But my expectation is that if a payment looks particularly unusual or high-risk, then the bank may choose to intervene and ask the customer further questions about the payment. The hope here is that this prevents any losses from going out.

I've also considered the principle of contributory negligence – as in whether it would be reasonable to conclude that L's actions were negligent enough that they contributed to the loss and whether it would be appropriate to make a deduction to any amount awarded.

I see that there were missed opportunities to prevent the transactions from L's accounts from Barclays. Several of these batches, and the individual payments within, were significantly more than L had previously sent from those accounts. And the amounts sent were significant portions of the balances available. This took place all within an hour.

While the Barclays.net system is designed to facilitate high volume payments, I still think the account activity across L's accounts ought reasonably to have prompted some concern. It would have been reasonable for Barclays to decline some of the higher value payment instructions until they'd been in contact with someone at L. And had they done so, I'm sure the fraud would have been quickly discovered.

However, while it's clear that this was a sophisticated scam, and I accept that the employee of L genuinely thought they were talking to Barclays, I think there are grounds to say that some negligence on L's part contributed to the loss.

Barclays have pointed to their previous education on fraud and scams provided – some of which mention very similar scenarios of being tricked in to providing remote access. I'm not persuaded that in the moment the employee of L would have recalled this.

But the messages displayed on the SWYS device would have been reasonably clear that payment instructions were being submitted, and I see that this reasonably should have given the employee pause. I appreciate that they say they believed they were only using the device to login. But it's not clear why at least seven logins would be necessary. And my understanding is that the employee had made payments before, so would have been familiar with the procedure. It doesn't appear to have been an urgent situation where they were pressured to carry out the actions. I see that there was the opportunity to stop and understand what was happening.

I see that by entering the PIN and selecting "OK" to submit the payment instructions when prompted this could be seen as negligent and contributed to L's losses. On that basis I see that making a deduction to reflect this is appropriate.

I don't see that one party significantly bears more responsibility than the other – so on that basis it would be reasonable for the losses to be split equally.

What is fair redress in the circumstances?

Barclays have made an offer of £176,577.47, which is 50% of the total remaining losses. They've termed this as a gesture of goodwill, rather than providing any specific reasoning. But it broadly follows my thinking outlined above. So, in the circumstances I'm minded that this offer for a refund is reasonable.

And as S has been without the use of these funds, it would be reasonable to include an interest award to reflect the period without use of them. Barclays haven't specified the interest rate, but our service typically awards 8% statutory interest per annum – which is also in line with debt judgements. I see no reason to depart from this. So, I would also include 8% simple interest to the refund, from the date of payments to the date of settlement.

Barclays has also offered £200 compensation for service issues previously, and I think that it's appropriate that they honour this offer.

I appreciate L has considered this offer previously and chose to decline it. But having considered what happened I'm minded that it's not unreasonable, and in line with the award I would have made had there not been an offer.

The provisional decision was accepted by Barclays. L disagreed, and in summary said:

- The payments had not been authorised, and consent had not been given for the payments to leave the account.
- Consideration was not given to the importance of the cloned website. And there were no warnings about the cloned website at the time.
- Barclays did not stop the payments, except for the overseas transactions. Since the scam Barclays had not changed how their payment system operates.

It now falls to me to consider the evidence afresh.

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 remain satisfied with the conclusions reached in the provisional decision. I appreciate this will be disappointing for L, and I shall do my best to address the points raised in their response to my provisional decision.

I would also say that our service's remit is to resolve individual complaints about financial businesses and their customers. It would be the role of the industry regulators to determine how things such as Barclays payment systems should work. And our role isn't to fine or punish a business for any failings on their part. Rather we look at what a fair and reasonable way to resolve any failings is.

Is it fair to treat the payments as authorised?

The central crux here is whether it's right to treat the payments as authorised. Everyone accepts that they were set up by the fraudster. It's whether the actions of the employee of L could be seen as giving consent to the payments being made.

Here, I am satisfied that it's more likely than not that the SWYS device's screen would have asked them whether they wanted to submit the payment request. This is the standard screen when payment instructions are set up and require the use of the SWYS device. I've seen no evidence that the fraudster would have been able to manipulate the text on the screen. So, I think it's likely that this is what the employee was asked to agree to when selecting "OK".

The question is whether this would count as "consent", for the purposes of the PSRs. And I'm satisfied that it would. The PSRs don't go into detail about consent but say it must be given in the "form and procedure" agreed between the parties.

The terms of L's account outline that Barclays will accept instructions given by following the stages of the online banking. I'm satisfied that the use of the SWYS device in this instance meets the definition on the "form and procedure" – the payment would not have been completed without the selecting of "OK" on the device.

While I fully accept this was done under false pretences, I'm satisfied that Barclays can rely on this representation to process the payment request. On that basis I'm still satisfied that the payments can be treated as authorised. So, there's no obligation under the PSRs or the terms of the account for Barclays to refund L.

So, I've gone on to consider what's fair and reasonable in all the circumstances of the complaint.

Should Barclays have done more to prevent the payments?

Barclays haven't disagreed that they should have noticed the payments were significantly out of place. And I agree with L's point that there were known issues with the Barclays.net portal being cloned at the time.

So, I'm satisfied they should have intervened before the first payment transaction, to discuss with someone at L whether the payment requests were genuine. And I'm certain that any reasonable intervention would have led the scam coming to light. This hasn't been disputed any further by Barclays. So, I agree that they could have done more to prevent the transactions leaving L's accounts.

I've also considered whether L should also bear some responsibility for the transactions. This is a different concept to "gross negligence" – which I'd take to mean a serious or

wanton disregard to an obvious risk. That's not what happened here.

What I've considered is contributory negligence. As in whether there was anything in L's actions, or inactions, that could reasonably have prevented any loss. And if there is, whether it's reasonable to apply a deduction to any award to reflect this.

L have highlighted that long calls with Barclays were not uncommon. They've also said there wasn't a specific warning about the cloned website, when it was a known issue. But as mentioned in the provisional decision, I'm not that persuaded the employee would remember any warnings when on the call with someone they genuinely thought was from Barclays.

Nevertheless, I'm still minded that there would be enough warning signs that something was amiss. I'm minded that the SWYS device would show details about payment instructions being submitted, which may have given the employee pause. There didn't seem to be any time pressure, and there would have been a familiarity with the process of authorising payments. And ultimately the actions they were taking were at odds with what they were being told was happening.

I remain satisfied that it's appropriate to apply a deduction to the award. And having considered it, I find a 50% deduction to be a reasonable amount. Barclays should therefore refund £176,577.47 of the loss.

As L has been without the use of these funds, it would also be reasonable for Barclays to pay 8% simple interest per annum on this amount.

Recovery and customer service

Neither party had anything further to add on the recovery of funds, so I'm satisfied that there wasn't anything further for Barclays to do here.

In terms of the customer service, the £200 Barclays have offered is delays and minimal communication. As mentioned, our service's role isn't to punish or fine businesses involved.

I've no doubt this was very stressful for Mr and Mrs G. As a limited company, L is a distinct legal entity from the directors. I can't consider the distress caused to the director's personally, but rather the disruption and inconvenience to L's business. And ultimately this is primarily down to the actions of the fraudsters, rather than Barclays. So, I see that's the £200 offered is reasonable.

Putting things right

To resolve this complaint Barclays must

- Refund L £176,577.47
- Add 8% simple interest per annum to this amount, from the date of payment to the date of settlement.
- Pay L £200 compensation

If Barclays considers that they need to deduct tax from the interest award, they should let L know how much has been taken. They should also provide a certificate showing how much was taken, should L ask for one.

My final decision

My final decision is that I uphold this complaint and direct Barclays Bank UK PLC to settle it

as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 8 July 2025.

Thom Bennett
Ombudsman