

complaint

G, a private limited company, complains that Barclays Bank UK plc failed to protect them from falling victim to a scam which resulted in the theft of two payments totalling about £15,000.

Barclays denies liability on the basis that G authorised both payments, which did not appear unusual or suspicious, so would not have alerted it to any wrongdoing.

my findings

Upon reading all the available evidence and arguments, including our investigator's initial assessment and G's response, I have decided that the fair and reasonable outcome to this complaint is as follows:

1. The relevant law and regulations—plus good industry practice—indicate that a bank does have a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible. A bank might be negligent and therefore liable for reasonably foreseeable losses if, in breach of that duty of care, it fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime by or against its customer.ⁱ
2. However, the Payment Services Regulations 2017 ('the Regulations'), in conjunction with the standard terms and conditions of accounts, indicate that a bank should execute an authorised payment instruction without undue delay — and there is a presumption that liability for an authorised payment rests with the payer even if his authorisation was obtained by third-party fraud.
3. It is fair and reasonable to rebut such a presumption if there is clear evidence that a bank breached its duty of care by not acting adequately or at all on information that would or should have triggered fraud alerts and systems required for the proper conduct of business.
4. It is common ground that G was duped into authorising two payments in settlement of supplier invoices: £8,400 to 'M' on 31 October 2018; and £6,656.40 to 'S' on 7 November 2018 (i.e. a total of £15,056.40). The scammers masqueraded as G's legitimate suppliers—whom G was expecting to pay—and emailed new 'invoices' with *their* bank details. So, legitimate invoice settlements were unwittingly authorised by G and diverted to the scammers' accounts with Lloyds Bank and the Royal Bank of Scotland.
5. By the time G realised what had happened and alerted Barclays, most of the funds had been removed from the payee banks (albeit Lloyds managed to recover and return £1,340.30 to G).
6. This was a sophisticated scam and it is understandable why G fell for it. Nevertheless, I am satisfied these were *authorised payments* for the purposes of the Regulations, which means there is a rebuttable presumption that G are liable for them.
7. On the individual facts and evidence in this case, there is nothing persuasive to indicate that the two payments were unusual or uncharacteristic for G and/or their account such that Barclays' alert systems ought reasonably to have been triggered and detected the scam. On the contrary, there had been legitimate payments to suppliers in the months prior to the scam for comparable or significantly higher sums which G had obviously not queried. Accordingly, Barclays had no information to give reasonable grounds for suspecting fraud or financial crime when it received authorisation for these two payments from G via their usual security credentials.
8. Like the investigator before me, I cannot accept G's argument that Barclays ought reasonably to have been triggered by the mismatch between the legitimate payee names

- which they had entered on the payment instruction and the scam names held by the payee banks. That additional security measure is now in place. But at the time it was not general industry practice: the account numbers and sort codes then being regarded as sufficient. It would be neither fair nor reasonable to judge Barclays by standards of conduct which a body of reasonably prudent, professional bankers did not then follow.
9. In all the circumstances, I find no persuasive evidence that Barclays breached its common-law duty of care to safeguard G against the risk of fraud and scams. It could not reasonably have foreseen this sort of loss as a result of those transactions; and I do not consider there was anything it could reasonably have done to prevent it.
 10. I am also satisfied that, on learning of the scam from G, Barclays took reasonable steps to try to recover the funds from the payee banks without undue delay. But it is common knowledge that scammers do normally remove stolen funds as quickly as possible in order to avoid detection and recovery. As our investigator set out in her chronology, the scammers withdrew most of G's monies within hours of deposit, so there were no reasonable prospects of recovering them (save for the £1,340.30 from Lloyds).
 11. Despite my natural sympathy for G, who have been an innocent victim of a sophisticated scam, I am not persuaded that Barclays acted in breach of contract or statutory duty and/or negligently — so it would be unfair and unreasonable to hold it liable for payments which, under the Regulations, G must be regarded as having authorised.

My final decision

For the reasons set out above, I am unable to uphold this complaint about Barclays Bank UK plc and therefore make no award against it.

Under the rules of the Financial Ombudsman Service, I am required to ask G to accept or reject my decision before 6 September 2020.

Mark Sceeny
Ombudsman

ⁱ See, for example, caselaw, the Payment Services Regulations 2017, the Financial Conduct Authority's Handbook, Consultation Papers, Policy Statements, etc.