

complaint

Mr B transferred £1,900, an intended deposit for a property, on 29 July 2016 from his account with another bank, to an account held with Barclays bank Plc.

The payment was due to be made to a genuine supplier but Mr B was the victim of a scam and a fraudster told Mr B to send funds to their own account. The fraudster was not genuinely accepting the payment as a deposit. Mr B complains that Barclays hasn't returned his funds to him or been more helpful.

background

Our adjudicator noted that within four 4 hours of Mr B transferring his funds, all but £100.10 of those funds had been withdrawn by the fraudster. As Barclays wasn't aware that its account was being used to receive scam payments until after the payment, the adjudicator considered there was little Barclays could have done to recover more of the funds.

The adjudicator explained that when a bank is made aware of a possibly fraudulent credit to one of its accounts, it doesn't have to refund any amount(s) paid into the account straight away. It might suspend the account that received the credit so that no further spending can occur and then investigate the activity that had taken place.

But the bank's response, including any decision to suspend the account, will depend on the circumstances in any given case; and, practically, it wouldn't be reasonable to expect the account to be suspended from the very moment that an allegation of fraud is made.

Commonly, in circumstances similar to those behind this complaint, funds received by a fraudster are withdrawn speedily upon receipt. Therefore, by the time an account is suspended, there's little left in the account to recover.

Here, the adjudicator established that the bank was made aware of potentially fraudulent activity on its account after the majority of Mr B's funds were withdrawn. In this case, it did quickly block the account and give its customer notice of the account being closed. But, ultimately, it was only able to recover £100.10 of Mr B's money. And the adjudicator didn't consider that the bank needed to pay to Mr B any more of the £1,900 he transferred.

Mr B has asked that his complaint be reviewed by an ombudsman. He's questioned the timetable of events on the day that the fraud happened. He believes that fraud was reported in respect of this account, before he did make his report – indeed, before he made his payment, and that the account should have been frozen before he made that payment.

my findings

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've come to the same findings and conclusions as the adjudicator.

Initially, let me say that I'm very sorry for the horrible trick that Mr B was victim to and for his financial losses. I acknowledge that Mr B has lost a significant sum as a result of a scam that can only be seen as cruel. I have great sympathy for Mr B. But I have to decide whether or not I can fairly and reasonably require Barclays to reimburse Mr B his losses.

And the adjudicator has correctly explained how Barclays might reasonably be expected to react in the circumstances surrounding Mr B's payment. What's key here is that Mr B says that another victim of the fraudster involved here contacted Barclays before Mr B made his payment, and was able to recover the funds that she lost. Yet he went on to make his payment of £1,900 and was only able to recover £100.10 of it.

The only evidence Mr B has submitted to support this alleged timetable of events is that he says he's been in touch with the other victim and she has told him she contacted the bank at 11.00am. Mr B's payment was made at 12.33pm.

However, I don't believe that another victim did contact the bank at this time. Barclays has no records suggesting contact was made with it about its customer at 11.00am. And it might be helpful if I set out a timetable of the day's events.

First, I should say that there were three victims who transferred funds to the fraudster's account on 29 July, the first of which I will refer to as victim A, Mr B I will refer to also as victim B and further funds were transferred by victim C. The account started the day with a balance of £0.10 but I will disregard that amount to aid with the simplicity of setting out what happened.

Victim A transferred two amounts of £950 to the fraudster at 12.07pm and 12.09pm. Mr B made his transfer at 12.33pm, the three payments meaning the account had a balance of £3,800. The fraudster removed £2,000 at 1.17pm and £300 at 1.19pm. At that stage, it's fair to say that victim A's funds, having arrived into the account first, had been taken as those would have been withdrawn first.

The remaining balance of £1,500 (the remainder of Mr B's funds) was added to by victim C's transferred funds of £950, received at 1.40pm. This created a balance on the account of £2,450. At 2.28pm, an email was received at the bank's 'reportascam' address, from a third party. Unfortunately, at 2.47pm, the fraudster withdrew £1,400 leaving a balance on the account of £1,050. But on the basis that funds first received into an account are those that are spent first, that transaction left only £100 of Mr B's funds on the fraudster's account.

Barclays was able to block the account before more funds were removed. So, it seems to me that I simply need to decide here whether the account could have been blocked sooner and whether more than £100 of Mr B's funds could have been prevented from being removed from the account.

Taking into account everything I've said, on balance, I don't think I can accept that Barclays were notified about any concerns over the account until 2.28pm.

And that leaves a window of 19 minutes in which the bank had an opportunity to act and prevent further activity on the account. But I have to take into account the practical requirements of a bank receiving a message, asserting fraudulent activity on the part of its customer, from someone that it has no relationship with.

There must inevitably be a need, amongst other things, to process that message in terms of recording it properly; identify who or what area in the bank should respond to it; the person or area identified review what's said to have happened and what is known about its customer; and then to reach agreement on next steps before taking them.

Also, it can't reasonably be assumed that, at any point of time, there are immediately available resources to undertake all of that or that the whole process can be completed without any delay or distraction at all.

Against that background, I need also to take into account relevant rules and regulations. These are clear that a bank receiving funds transferred to an account it holds isn't liable for the non-execution or incorrect execution of a payment transaction if the payer uses wrong details. It therefore follows that it can't be liable here where Mr B has used the right details – but sent money somewhere he didn't intend.

But, where the wrong payment details are used – and I think it fair to say, equally, where a payment is made as a result of a scam - the receiving bank should assess information it's received and consider whether to protect the money, where it's still in the account at the receiving bank. Or make a decision about what to do with the funds.

In practice, this might mean that it will block the money or, if it chooses to then allow funds to leave the account, explain why it hasn't. But if the money has been moved on before or very soon after any contact, there's no basis for saying the receiving bank should chase it.

Of course, this is all what happened here – just not quickly enough to protect Mr B from suffering so great a loss. And industry guidance also suggests that action should be taken by a bank within 48 hours. That doesn't mean that a bank needs to take as long 48 hours to act - but given the expectations on Barclays, in this matter, I can't fairly and reasonably say that the bank should reimburse Mr B any further than it's offered to, simply because it failed to act within 19 minutes of receiving an allegation of fraud on the part of its customer.

I note that the bank delayed in sending Mr B a final response to his complaint and this understandably caused him upset. Barclays offered Mr B £100 compensation for this. Like the adjudicator, I agree that this level of compensation is appropriate for the bank's actions.

my final decision

My final decision is that, in full and final settlement of this complaint, Barclays Bank Plc should return to Mr B £100.10 (if it hasn't already done so) and pay him £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 December 2016.

**Ray Neighbour
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