

## **The complaint**

Mr M complains that Barclays Bank UK PLC, trading as Barclaycard won't refund a series of credit card payments made from his account to an online gambling firm. He says he neither made nor authorised those payments.

## **What happened**

The detailed background to this complaint is well known to both parties, so I'll only provide a brief summary here.

Mr M disputes several payments totalling £1,500 made to an online gambling firm. The transactions occurred in the early hours of one morning in February 2020.

Mr M contacted Barclaycard to inform it that he hadn't made any of the payments and to seek a refund. Barclaycard looked into what Mr M had told it had happened but concluded that Mr M must have made the payments himself. It noted that the correct card details had been used and evidence provided by the merchant confirmed Mr M's genuine details had been used to create a gambling account. It also added that the IP address used to register and make payments on the gambling account, was the same IP address Mr M regularly used to access his account online. Barclaycard also said Mr M had used a similar merchant a few days earlier – which Mr M had confirmed as genuine. On this basis it concluded that the disputed transactions had been carried out by Mr M himself.

As Barclaycard didn't agree to a refund Mr M referred the matter to this service, where one of our investigators considered it. He too concluded that it was more likely than not that Mr M had been responsible for the transactions he was disputing and didn't recommend that Barclaycard refund them. Mr M didn't accept the investigator's view and asked that an ombudsman review the case.

## **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, however, I've reached the same overall conclusions as the investigator did, and for similar reasons. I appreciate this will come as a disappointment to Mr M but please let me explain why.

The regulation that is relevant when considering Mr M's complaint in relation to the disputed transactions is the Payment Services Regulations 2017 ("PSRs2017"). Under the PSRs2017 banks are required to refund the amount of an unauthorised transaction - where its customer didn't make or authorise payment(s) themselves. There are some exceptions in the regulations, but none I've needed to consider or that have had an impact on the decision I'm making here. So, when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the payment(s) themselves or allowed them to be made. If we're satisfied that they did, then we generally wouldn't ask the bank to refund them.

So, I need to come to a view about whether or not I think Mr M authorised the payment. Looking at all the facts of this case, I can't know for certain exactly what's happened. I wasn't present at the time when the disputed transactions took place or when the preceding and ensuing events occurred. So, in situations like these I need to decide a case on what I think is more likely than not to have happened. To help me decide this I've considered what Mr M has told us and the information he has provided about the events leading up to the disputed transactions. I have also taken into consideration what Barclaycard have said and all the other evidence surrounding the transactions before reaching my decision.

From what I've seen it remains unclear whether Mr M fell asleep in his car or whether he was attacked outside his home. By his own admission all he has consistently recalled is reaching home after work at around 11.00pm and then waking up in his car the following morning at around 7.00am. He says the contents of his wallet were emptied out on the passenger seat and his mobile phone on the floor between the passenger seat and car door.

The evidence provided by the merchant shows that during the eight-hour period Mr M has no recollection of, a new gambling account was registered using his correct personal details. And this in addition to all the disputed transactions took place from the same IP address he uses regularly to access his online account. Mr M says he neither made nor authorised these transactions. He believes these were carried out by an unknown third-party without his consent. But having carefully considered everything I don't believe that's what happened here.

From the evidence I have seen I am satisfied that the payments were authenticated, and I think on balance it's more likely Mr M made them himself. I say this for the following reasons;

- The gambling account was opened using Mr M's genuine details. Mr M has argued, and I agree it's possible of course that someone in possession of his wallet and his unlocked phone could've had access to all his information and used it to open the account and carry out the transactions. But I'm not persuaded that this is what has happened as all activity was carried out from the same IP address that Mr M regularly uses to log into his online account and given that the gambling account was registered at 1.25am and the first disputed transaction took place nearly 5 hours later at 6.31am I'm not persuaded that an unknown third party who had attacked Mr M would've waited 5 hours outside Mr M's home after registering an account before carrying out any transactions.
- Usually you'd expect a fraudster to make the most of having access to the card details in the shortest amount of time to maximise their gain before the fraud is identified and the card blocked. So, on balance I'm not persuaded that the activity matches what I'd typically expect to see of fraudulent use nor am I convinced someone who had attacked Mr M would've waited around risking getting caught.
- I also cannot see the benefit to an unknown third party of spending Mr M's funds by registering a gambling account in his name, using his card – as any winnings would be payable to Mr M, not the third-party.
- I also note that Mr M had made payments to a similar gambling site a couple of days before the disputed transactions took place. These had been made using the same IP address and followed a similar pattern. Whilst I don't consider either of those matters as particularly conclusive in themselves, but combined with the other matters I've mentioned, they are relevant.

- Similarly, the fact that Mr M has not provided anything to support that the attack was reported to the police on its own isn't conclusive. But it is not irrelevant either and, taking account of it alongside other matters I've mentioned above I'm not satisfied that an unknown third party carried out the payments without Mr M's consent.

For the reasons I've detailed above, I think that the most likely explanation here is that Mr M carried out the transactions himself. In the circumstances, it wouldn't be fair to require Barclaycard to refund them.

### **My final decision**

My final decision is that I don't require Barclays Bank UK PLC to take any further action to resolve Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 August 2020.

Sonal Matharu  
**Ombudsman**