

The complaint

Ms M complains that Barclays Bank UK PLC (Barclays) failed to refund transactions she didn't recognise.

What happened

On 9 June 2020 Ms M reported disputed transactions on her account from 7 and 8 June 2020. The disputed transactions related to two betting companies (A and B in the table below). A didn't challenge the chargeback so the payments were refunded but B responded on 2 July 2020. On the same day Barclays sent Ms M the evidence from B and advised her that if she wished to continue to dispute the transactions, she should respond within ten working days explaining why. Ms M didn't respond, and her fraud case was closed.

Ms M later disputed the transactions in bold to B.

Date	Time	Merchant/log in	Transaction type	Amount
02/06/20	11.40	A	Debit card online	£20
02/06/20	15.59	A	Debit card online	£20
02/06/20	16.16	A	Debit card online	£50
03/06/20	14.17	A	Debit card online	£50
04/06/20	22.47cc	Mobile banking log on		
06/06/20	12.02	A	Debit card online	£5
06/06/20	12.03	A	Debit card online	£50
06/06/20	12.14	A	Debit card online	£50
06/06/20	12.14	A	Debit card online	£50
07/06/20	00.44	Mobile banking log on		
07/06/20	10.51	B	Debit card online	£100
07/06/20	13.48	B	Debit card online	£100
07/06/20	15.20	B	Debit card online	£100
07/06/20	16.51	Mobile banking log in		
08/06/20	14.30	B	Debit card online	£100
08/06/20	22.16	B	Debit card online	£500
08/06/20	22.18	B	Debit card online	£500
08/06/20	23.26-23.31	Account at B accessed from same IP address as mobile banking log ins		

08/06/20	23.34	Mobile banking log in		
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A and B have confirmed that the accounts were set up using Ms M's personal information. The account with A was set up in April 2020 and a £20 payment was made. A has said that it has received contact about bets placed and deposit limits. B has confirmed that the account was set up using Ms M's full name, date of birth, address, email address and mobile telephone number, and has provided the IP address used. B also confirmed the security and verification checks it completed when the account was set up.

During our investigation we asked Ms M if anyone else could have had access to her debit card. At this point Ms M said that her then ten-year old grandson could have gained access to her card when he stayed at her home. Ms M later confirmed that her grandson admitted he'd used her card on betting sites.

What Barclays say

Barclays held Ms M liable for the disputed payments. In summary, it said:

- B has confirmed the account was opened using Ms M's full name, address, email address, date of birth and mobile telephone number and the IP address used. The personal details weren't printed on Ms M's card so could only have been provided by Ms M or someone known to her. The IP address was the one most commonly used by Ms M for mobile banking, suggesting it was Ms M's home address.
- The IP address used matches the one used for mobile banking on 7 and 8 June 2020 and Ms M's mobile banking app was accessed using the five-digit security code she set up.
- As Ms M logged into her mobile app on 7 June she will have seen the transactions but didn't report them until 9 June. If she cancelled her card or called Barclays on 7 June the transactions on 8 June could have been prevented.
- Barclays didn't find it credible that a ten-year old had used Ms M's card and registered on gambling sites. The behavior isn't typical of a child even if they are able to compromise card details. Barclays also said it's unlikely a child would use an adult's genuine details given that any registration confirmation would be sent to the cardholder's phone or email address.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. In summary, he said:

- It was less likely that Ms M's grandson had created accounts with three gambling companies including B and used them over a period of time.
- If Ms M's account was compromised he'd expect to see other spending.
- Any potential winnings couldn't be accessed by a third party.
- All of Ms M's contact details were used to set up accounts, including the account with B. And a different company says it received contact about bets and limits. The investigator felt it was unlikely a 10-year old would do so.
- The disputed transactions were often followed by mobile banking logins from the same IP address.
- If the payments weren't authorised he'd expect them to be reported sooner than they were. Payments to other gambling companies that were disputed at the same time were made from 2 June 2020 and Ms M didn't report them until 9 June 2020.

Ms M didn't agree with the investigator. She said:

- She has never gambled before,
- The original investigator upheld her complaint and was satisfied with her explanation.
- The transactions were made at a very distressing time for her as her father was terminally ill and died on 17 June 2020.
- She has noted that her details are saved on her laptop which may be how her grandson gained access.

As Ms M disagreed with the investigator's findings, the complaint has been passed to me to review.

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.

And where there is a dispute about what happened, and the evidence is incomplete or contradictory, I must reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened given the available evidence.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Barclays can hold Ms M liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them.

Authorisation is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, Barclays has supplied evidence that shows Ms M's debit card details were used to make the payments and I'm satisfied the disputed transactions were authenticated.

Consent refers to the way in which Barclays and Ms M agreed to operate the account to allow Barclays to make payments on Ms M's behalf. For example, Barclays' terms and conditions set out that if a payment is arranged through the use of a device (Ms M's debit card), then Barclays accept that the instruction to make the payment is authorised by the account holder.

But the regulations relevant to this case say that is not, on its own, enough to enable Barclays to hold Ms M liable. I also need to think about whether the evidence suggests it's more likely than not Ms M consented to the payments being made.

I can't know for certain who carried out the disputed payments, as I wasn't present at the time. So, in order to reach my decision, I take all the available evidence into account and make my decision on what I think is more likely than not to have happened.

Having looked at all the evidence and considered Ms M's explanation carefully, I'm not persuaded by what she has said. And on balance I've ruled out that a third-party was responsible for making the payments without Ms M's consent. So, I don't think it would be fair or reasonable to say Barclays needs to refund her. I say this for the following reasons:

- Although I only need to consider disputed transactions to B (as Ms M hasn't suffered a loss from A) I need to consider the full facts of this case. On 3 April 2020 £20 was paid to A and this payment has never been disputed. Four payments were then made to A on 2 and 3 June 2020, but these payments weren't reported to Barclays until 9 June even though Ms M logged into her mobile banking app on 4 June 2020. Further payments were made to A on 6 June and again Ms M logged into her mobile banking app the following day but also didn't report any disputed transactions at that stage.

So, before the disputed payments to B, there is evidence of activity on gambling sites from April 2020 and of mobile banking log-ins that would have shown these transactions.

- All the disputed transactions to B were made from the same IP address as the one used on the Barclays mobile banking app and which appears to relate to Ms M's home address. More significantly, after three transactions to B on 7 June 2020 Ms M logged into her mobile banking app from this same IP address so Ms M would have seen the payments or pending payments. Then on 8 June 2020, around three minutes after the account at B was last accessed, and from the same IP address, Ms M has logged into her mobile banking app. On the balance of probabilities, I consider the person who completed the transactions to B also logged in to Ms M's banking app.
- A five-digit security code is required to log into Ms M's mobile banking app. Even if Ms M's grandson had access to her mobile phone I haven't been provided with any explanation as to how these security details were compromised. And I can't see why a 10-year old child would want to log into his grandmother's online banking after making gambling transactions. I'm persuaded it's more likely that Ms M logged into her online banking app to check her transactions.
- The account with B was set up using Ms M's genuine personal details and these same details were also provided to A. I find it unlikely a 10-year old boy would know and use all of these genuine details. I also consider it unlikely that a 10-year old made calls to A about bets and deposit limits. I say this because I don't consider a child of this age could pass himself off as Ms M or would have sufficient knowledge to have these conversations.
- A third party wouldn't have had access to any winnings as they would be credited to Ms M's account.
- I'm aware that Ms M says she didn't know she could block her card on the mobile banking app and waited until after the weekend to report the disputed transactions to Barclays. But I would have expected her to report any disputed transactions immediately by telephone. This isn't what happened here. Disputed transactions on 7 and 8 June 2020 weren't reported until the following day.

Overall, I'm persuaded it's more likely than not that Ms M consented to and authorised the payments to B.

My final decision

For the reasons I've set out I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 23 March 2022.

Jay Hadfield
Ombudsman