

The complaint

The estate of Mr C1 complains that Barclays Bank UK PLC failed in its duty of care to protect Mr C1 when it processed a number of gambling transactions on his behalf. Mr C1's estate is represented by his son, Mr C2.

What happened

The facts of this case are well-known to both parties, so I don't intend to go into too much detail here. However, it may be helpful to summarise the background briefly:

What Mr C2 (on behalf of Mr C1's estate) has said

In August 2019, Mr C2 became concerned about some large payments that had left his father's account in the days prior to his death. The transactions were made using a gambling website and amounted to over £100,000 – with one single transaction alone amounting to £50,000. All of the transactions took place within a 12-hour period.

Mr C2 said that gambling such large amounts was unusual for his father and he now believes that the transactions were likely carried out whilst his father was in a confused state due to an undiagnosed illness which, I am very sorry to say, led to his death the next day.

Mr C2 said the transactions were unusual and out of character when compared to the usual activity on his father's account and so he thinks they should have been flagged as suspicious by Barclays and Mr C1 contacted at the time. Mr C2 says that had Barclays contacted Mr C1 when he was in the process of making these transactions, the transactions could have been stopped. Mr C2 has pointed out that a daily payment limit of £50,000 applies to transfers between individuals and he believes that had the same transaction limit been applied to card payments too, Mr C1's loss could've been significantly reduced.

Mr C2 has also provided testimony from a medical practitioner who has confirmed that Mr C1 may have had a condition known as an 'acute confusional state' which can cause those suffering from it to act out of character and become confused. Mr C1's estate believe that Mr C1 was clearly vulnerable at the time he was making these transactions and the unusual nature of the transactions was an indicator of this. As such, they believe Barclays failed in its obligations to protect C1 from financial harm.

What Barclays has said

Barclays acknowledged that Mr C1's estate felt the transactions to be unusual for the account. However, it pointed out that there was no evidence, other than the transactions themselves, that supported Mr C1 was in a confused state or that his mental capacity was impeded at the time the transactions were authorised. Barclays pointed out that even if he had been, Barclays wouldn't have been aware of this at the time and so they wouldn't have been able to put safeguarding measures in place for him.

Barclays said that the transactions that left Mr C1's account were made to a legitimate and well-known gambling website, and so on the face of it, there wouldn't have been anything to put them on notice that something might be amiss. The transactions were being authorised using the card attached to the account and were being made to a legitimate merchant. Barclays pointed out that the transaction monitoring systems it has in place are designed to identify potentially fraudulent transactions but, for the reasons set out above, the transactions now in question here wouldn't have appeared as potentially fraudulent and would not have triggered its internal systems.

Barclays went on to state that the £50,000 daily limit that Mr C2 referred to only applied to transfers between individuals and not to online card payments and so it believed it wasn't relevant to Mr C1's circumstances.

Unhappy with Barclays' response, Mr C2 brought the complaint to this service and asked us to review it.

One of our investigators looked into the complaint and upheld it. However, whilst he had significant sympathy for Mr C1's estate and felt there were some significant failings on behalf of Barclays, he didn't recommend any redress be paid. Whilst he agreed that Barclays should've contacted Mr C1 about the transactions at the time, he didn't think it was more likely than not that any such contact would've prevented the transactions from taking place. There was no contemporaneous evidence that Mr C1 was in a confused state at the time and he had authorised the transactions himself online. And so, our investigator didn't think it would be fair to now say that Barclays could've likely prevented the transactions and so should be liable for them now.

Mr C1's estate disagreed. They said that the transactions that left the account amounted to nearly £130,000. They were unusual for the account and this should have prompted some action from Barclays. The estate put forward that had Mr C1 been contacted, it was most likely that any conversation would've interrupted Mr C1's thought processes and his spending. They also said that Mr C1 might've asked Barclays for help to prevent further transactions. Finally, Mr C1's estate submitted that it would seem appropriate to award some form of compensation for the serious failings by Barclays and this would help draw a line under the matter and help the family move on.

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'm minded to reach the same outcome as our investigator - for largely the same reasons. I'll explain why.

The daily usage limits

There is no dispute that Mr C1 input his debit card details into the gambling website in order to make the transactions now in question here. In doing so, he provided Barclays with the authority to debit his account with the amounts specified. There is no daily usage limit attached to this type of transaction. And so, whilst I acknowledge Mr C2's arguments that a limit of £50,000 is applied to transfers between individuals via online banking and the distinction between the two payment methods is 'arbitrary', the fact remains that this distinction was in place at the time and no such limits applied. So, it wouldn't be fair for me

to now ask Barclays to adhere to a limit that wasn't in place at the time and ask them to refund any amounts over and above this limit now.

Barclays has an obligation to process transactions at its customers request and by entering his card details into the gambling website, Mr C1 had requested that these payments be made and had in turn provided Barclays with authorisation to debit the amounts from his account. And so, I'm not persuaded that the daily usage limits applicable to other types of transaction are material to the outcome of this complaint. The key point here is whether the transactions should have appeared as suspicious enough to warrant further intervention by Barclays and whether this would have ultimately made a difference. I will address this point in more detail below.

Processing the transactions

Banks, such as Barclays, are required to have systems in place to look out for out of character or unusual transactions, or other signs that might indicate that its customers might be at risk of financial harm from fraud. My understanding is that the crux of Mr C2's argument is that the large amounts of money leaving his father's account were unusual and out of character when compared to his usual spending activity, and because of this, the payments should have 'triggered' Barclays fraud monitoring systems and prompted further action from them. However, I don't necessarily agree.

As our investigator set out, Barclays' fraud monitoring systems are designed to identify potentially fraudulent transactions. They are programmed to identify certain characteristics in order to try and predict when a customer may be at risk of harm from fraud or about to fall victim to a scam. They are not there to pick up on, and then to prevent, a customer making payments that may not objectively appear sensible or in the customers best interests – such as large gambling transactions which may not seem advisable to a third-party looking in.

Mr C1's bank statements show that he had been gambling large amounts of money in the days leading up to the dates now in question – starting on 2 August 2019. And the payments were being made to a genuine, well-established, company. And so, I wouldn't have expected Barclays' fraud prevention systems to have 'flagged' the transactions as suspicious. The transactions weren't suggestive of fraud or a scam and were being paid to a well-known merchant.

However, I do agree with our investigator that, even with having said the above, banks are expected to be on the lookout for clear changes in their customers banking activity. Mr C1's account had been active with Barclays since 2016 and in the three years leading up to August 2019, it doesn't appear that Mr C1 had been a regular gambler nor did he make frequent large payments. However, by 19 August 2019, Mr C1 had gambled £9,000 in a single day and this was unusual banking behaviour for him. And so I do agree that Barclays should've identified this and contacted Mr C1 to discuss the activity on his account. However, I don't think it necessarily follows that this would have led to the transactions being prevented. I'll explain why.

Firstly, it's important that I stress here that it is impossible for me to say exactly how this conversation would have unfolded and so I must base my decision on what I think is *most likely* to have happened had Barclays intervened further. And I've done this by considering the usual types of questions I would've expected Barclays to ask had they contacted Mr C1 at the time and what I know about his circumstances.

I acknowledge Mr C2's argument that any intervention by Barclays may have interrupted Mr C1's thought processes and I acknowledge that this is a possibility, but I'm not satisfied this

is the most likely scenario. Mr C1 had logged on to the gambling website and requested that these payments be made, and I've not seen any evidence that would allow me to determine whether intervention from Barclays would've stopped him from continuing to do so. Instead, it seems most likely that Barclays would've confirmed that they were speaking with Mr C1 and enquired whether he was authorising the transactions. Having requested the payments online, it seems likely that Mr C1 would've confirmed the above. As I said previously, I've seen no evidence to suggest Mr C1 wasn't authorising the transactions for the purposes of gambling. And having confirmed that the transactions had been requested by Mr C1, there would have been no reason for Barclays to have declined to process the payments on his behalf – they were going to a legitimate merchant and weren't being made as a result of fraud.

And so in summary, and based on the particular circumstances of this case, I'm satisfied the activity on Mr C1's account in August 2019 should've prompted some contact from Barclays. But there is no evidence to suggest what would've happened had contact been made and I'm satisfied that the most likely scenario is that Mr C1 would've confirmed he had authorised the transactions. And so I don't think it would be fair to ask Barclays to offer Mr C1's estate a refund now.

Finally, I want to say how sorry I am to hear of Mr C1's passing. My sincerest condolences to his family. I understand that this must have been a difficult time and I am sorry that my decision will likely be disappointing.

My final decision

My final decision is that I do not uphold this complaint about Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C1 to accept or reject my decision before 29 June 2022.

Emly Hanley
Ombudsman