

The complaint

Mr L and Mrs L complain that Barclays Bank UK PLC failed to refund transactions they didn't recognise.

What happened

Mr L and Mrs L are joint account holders. The disputed transactions occurred on Mrs L's debit card although Mr L has brought the complaint to our service.

The complaint concerns a large number of transactions to various online gambling merchants that took place over several months which the account holders deny making. These payments were made via a company who provided "merchant acquiring services" and I'll refer to them as M. These services allowed transactions to be made with the online merchants via M and then the payments were collected from Mr L and Mrs L's account to settle the transactions.

Mr L told Barclays that they hadn't received statements for some time which is why the disputed transactions weren't noticed earlier. They were reported about six weeks after the last disputed transaction. Barclays thought the account holders were grossly negligent because they delayed notifying Barclays about the disputed transactions. Barclays didn't think there'd been any error with the delivery of the statements.

A number of transactions were automatically refunded which Barclays later advised was an error. When Barclays looked into the remaining disputed transactions they believed that they were authorised by Mr L and declined to refund the remaining transactions. Barclays cancelled the card and replaced it.

Mr L and Mrs L brought their complaint to the Financial Ombudsman Service for an independent review where it was looked into by one of our adjudicators who asked for information from both parties. Mr L explained that neither he nor Mrs L had made the transactions and hadn't received statements which delayed the notification of them to Barclays.

Barclays provided details about the transactions and copies of the account statements. They believed that Mr L was responsible for these transactions as other earlier payments to gambling merchants (some the same as those later disputed) via M hadn't been disputed by either Mr L or Mrs L. Barclays didn't believe the pattern of the transactions was typical of unauthorised card usage and the account had received several thousand pounds of credits via M, likely winnings from the gambling payments that Mr L hadn't challenged. Barclays explained that the gambling merchants only made payments (for winnings) back to the same account/card they were made from, which would make it difficult for any winnings to be utilised by a third party. Barclays reported that M didn't respond to their enquiries.

After considering the information supplied by both parties, the adjudicator thought that Mr L was likely responsible for making the payments himself.

Mr L disagreed with the outcome and asked for a further review of his complaint which has

now been passed to me for a decision.

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.

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

Barclays can only refuse to refund unauthorised payments if it can prove Mr L or Mrs L authorised the transactions, but Barclays cannot say that the use of the card payment details conclusively proves that the payments were authorised.

Unless Barclays can show that consent has been given, it has no authority to make the payment or to debit Mr L and Mrs L's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mrs L. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr L and Mrs L responsible for the disputed transactions or not.

Whilst the disputed transactions were made with Mrs L's card, both account holders have equal right to use the account and make payments from it. I do recognise that Mrs L, who is over 90 years old is unlikely to have made these numerous gambling transactions using M's services to make the payment (which would also need an account with M).

But, looking at the history of transactions on the account, it's apparent that Mr L has an account with M. He previously made numerous payments to various gambling merchants using his account with M which haven't been disputed. At least one of those merchants is the same as several of the transactions that were later disputed by him, on behalf of Mrs L.

I also noted the incoming payments received from M into the account which amounted to over £6,000. The statements aren't specific about which merchant made the various payments to their account, but they are direct payments from a business in Mr L's name. As the majority of transactions made via M are to gambling merchants, there doesn't seem to be any other reasonable explanation for these incoming payments.

So, I think it more likely than not that the incoming payments were linked to gambling activity. What that means for the complaint is that the joint account received a considerable amount of funds into it which Mr L hasn't disputed – and if he wasn't responsible for the disputed transactions then he wouldn't then be entitled to those incoming payments either. Essentially the account can't have had both disputed gambling transactions and then received undisputed payments into it from those gambling winnings.

I've also thought about the likelihood of an unknown third-party having access to Mrs L's card being responsible for these disputed transactions. The way the transactions have been conducted (for relatively small amounts over several months) doesn't seem typical of third-party use. When the disputed transactions first started, the account held a considerable sum of money. It would have been a fairly straightforward matter for the account to be emptied, but that wasn't the case here. It's untypical for stolen card details to be used over such a long period of time because a third party wouldn't know when their use of the card would be reported by the cardholders. In this case they wouldn't be aware that Mr L and Mrs L were experiencing difficulties with their statements which delayed their notification.

Much more likely that any third party would use whatever was in the account as quickly as possible before the card was stopped, but that didn't happen here. I accept that there are occasions when the "typical" card usage of a stolen card isn't followed, but I don't think this is one of those examples.

I recognise the disputed transactions were made using Mrs L's card details, but considering the account was held jointly, I don't think it's implausible that her card details were known to Mr L. And considering the historical relationship with gambling transactions using M (by Mr L), including some with the same merchant, I think it more likely than not that he was responsible, and it was reasonable for Barclays to hold him liable for them.

Gross negligence

Barclays also thought that the account holders were grossly negligent due to the delay in notifying them about the transactions. As I've made a finding that I think Mr L was likely responsible, I don't need to consider this aspect further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 31 January 2023.

David Perry
Ombudsman