

The complaint

Mr S complains Barclays Bank UK PLC (“Barclays”) are holding him liable for payments he didn’t authorise after falling victim to fraud. He adds that Barclays failed to protect him from financial harm.

What happened

In August 2022, Mr S and his wife travelled overseas on holiday.

Mr S says that after having dinner and a few drinks on 8 August 2022, he was approached by a lady from a nearby casino - in the vicinity of the hotel complex – to come in and use free gambling tokens. He says that after using these up, he was ready to leave but was told it was fine for him to carry on playing as he was.

Afterwards, he was told he needed pay for his losses. As he disputed this, he says two other individuals closed the casino and threatened him. He says one of them was carrying a gun. Mr S says he agreed to pay this amount but explained he didn’t have any payments cards or cash with him as he was holidaying on an all-inclusive basis. He says one of the three individuals then took his wife to their hotel room for her to bring his wallet.

Once his wife returned, Mr S made the payment using his card and PIN. He says the card was taken by the fraudsters who put through many more payments he didn’t agree to.

At that time funds were transferred from Mr S’ ISA and savings account into his current account. As a trustee, Mr S’ banking App also had access to a charity current and savings account. £30,000 was transferred from these accounts into his personal Barclays current account.

Around 20 payments were made to the casino amounting to around £30,000 that evening. Around the time the payments started being made, Mr S received a text message from ‘Barclays’ asking if a transaction to the casino was being made by him. Mr S replied with ‘N’ to indicate no.

Later, after being released, Mr S called Barclays and raised a claim disputing he authorised the payments. Barclays did not uphold his claim. Mr S complained. In its response, Barclays said it was right to hold him liable for the transactions. That’s because he provided the casino with his details and verification.

Unhappy with what Barclays said, Mr S referred his complaint to this service. One of our Investigator’s looked into it, and they upheld the complaint in part. In summary, they found:

- That despite Mr S responding that he wasn’t making the payment to the casino at 2:57am by text message, several payments to the casino still went through
- Barclays say the text was from Barclaycard for Mr S’ credit card, which was blocked after he responded – and no such text message was sent for his debit card for which payments were processed as they were verified by CHIP and PIN.

But there is an obligation on Barclays to protect its customers from potentially falling victim to frauds and scams. This includes monitoring accounts and identifying suspicious activity that appears unusual or out of character

- Mr S' statements show there was a significant shift in his spending patterns that night – and they were high-value and high-risk. As Mr S responded that he wasn't making a payment on the credit card to the casino at 2:57, Barclays should have blocked his debit card too until it made further contact with Mr S. So any payments made after this point should be refunded
- But they can't ask Barclays to refund any of the funds that came from the charity account as they don't belong to Mr S. Any dispute here is for the charity to raise
- To put things right Barclays should refund payments made from 2:57am up until the point the charity money comes into the account. It should also pay applicable interest on the savings and ISA account from the date Barclays declined the claim till settlement

Barclays did not agree with what our Investigator said. It has made several points, some of the key one's are:

- Mr S advised Barclays his card was forcefully taken from him, however there is no mention his credit card was taken forcefully too
- The SMS text message confirms the credit card as well as the debit card were used to carry out transactions at the casino. This means both cards were shared with the fraudsters
- Mr S responded 'N' at 2:57am, but the funds Mr S is claiming were conducted via the fraudsters using his mobile phone were at 2:50am. It's unlikely a fraudster would give Mr S his phone back to respond 'N' as this would block the card from further use
- Mr S uses WIFI before and after the disputed transactions. That means the fraudster would have gone into the phone settings and switch off the WIFI connectivity – this does not make sense
- It's unsure why Mr S' wife didn't take the opportunity to alert local authorities what was going on when she was allowed to leave to get his cards from their hotel room
- Mr S called Barclaycard to get his block removed from his credit card and confirmed he was at the casino. But he did not mention anything about the blocked transaction being made under duress and was very calm
- Gambling transactions are not permitted on a credit card, but customers can allow or block gambling transactions through their mobile banking app for the debit card. If Mr S replied 'N' to the Barclaycard SMS, then why didn't he switch off gambling transactions for his debit card
- There was no activity on Mr S' personal account via his mobile phone. The fraudsters targeted a charity savings account which Mr S is a member of and spent that balance – but didn't access any other funds that were available
- There are internet media articles showing gambling scams take place in the country Mr S visited. It appears Mr S has fallen foul of a local scam given he was encouraged to play on after using free chips. So Mr S may have got caught up in the occasion of

the chance to win large sums of money, rather than fraudsters accessing his money

In response to a question raised by Barclays, Mr S responded that his wife was not alone at any point. She was taken to their room by one of the casino staff members – who was carrying a gun. They were terrified given it was a foreign country, their first day there and didn't want to put their lives at risk.

As Barclays didn't agree with what our Investigator said, this complaint has now been passed to me to decide.

Relevant Considerations

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations ("PSR") - and the terms and conditions of the customer's account. So I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story:

- The law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer (known as 'the Quincecare duty')
- Regulated firms like Barclays are also required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to 'pay due regard to the interests of its customers' (Principle 6)

And as a matter of good industry practice at the time, I consider firms should also have taken proactive steps to:

- look to identify and help prevent transactions - particularly unusual or out of character transactions – that could involve fraud or be the result of a scam (something also recognised by the British Standards Institute's October 2017 'Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice', which a number of banks and trade associations were involved in the development of)

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.

Both parties are aware of the transactions in dispute here, so I don't need to list them here.

Authorisation

Barclays have sent me technical information which shows the transactions in dispute were made using CHIP and PIN. So I'm satisfied they were authenticated in line with the proper form. So I now need to think about whether the evidence suggests Mr S consented to the payments being made.

I've listened to several calls between Mr S and Barclays - and a call with our Investigator.

Mr S says he consented to the first payment to the casino after initially disputing it. He says he was given the impression he could carry on gambling for free as before.

Initially, when first reporting the fraud, Mr S said the fraudsters saw his PIN and took his card off him to use it for the subsequent transactions. Mr S said the fraudster was always standing next to him and even told him they were putting through smaller payments to avoid the bank's fraud detections systems.

Mr S told our Investigator the PIN was seen by the fraudsters, and that he was asked under duress for it from the fraudster. He says he complied as he was terrified.

There's some ambiguity here whether Mr S was observed using his PIN through intimidation – or whether he was told to give the PIN number equally through intimidation and threatening behaviour. Having listened carefully to these calls, I'm persuaded Mr S gave the PIN number to the fraudsters.

I note Barclays suggest Mr S may have been caught up in the euphoria of winning a large sum of money rather than being the victim of vicious fraud. Ultimately, I can't know what happened for sure as I wasn't there. But having listened to Mr S' consistent testimony, the fact he reported the matter to the Police after getting Barclays' advice, and given his previous use of the account, I'm satisfied it's very unlikely this is some contrived ruse to recover lost funds to gambling losses made in the exuberance of the moment.

As it's most likely Mr S, albeit through intimidation and duress, gave the fraudsters his CHIP and PIN credentials, I think he has failed with intent to comply with his obligations as a payment service user.

So I'm satisfied the transactions in dispute here were authorised in line with what the PSR's say about this. So they don't need to be refunded under the provisions of these regulations.

Should Barclays have done more to protect Mr S from financial harm?

Mr S has said Barclays failed to protect him from financial harm, as the spending was out of character and carried out abroad. Mr S feels Barclays' fraud prevention systems would have alerted it to what was going on.

Mr S accepts he made the first payment to the casino. The statement Barclays have given me shows this to be £405.39.

Mr S has sent me a screenshot which shows he received a message from 'Barclays' at 2:56am on 8 August 2022 querying a payment to the same casino, and in the currency of the country he was in. That amount matches, at least in current exchange rates, with the first payment Mr S made on his debit card.

Mr S replied 'N' to indicate he wasn't making this payment. Mr S says he was forced to hand over his debit card and PIN. And he's said that he needed to transfer funds to make the payment, so he used his mobile banking App. But this was later taken off him by the fraudsters too. So this may explain why the credit card wasn't taken off Mr S – after all it would have been of no use to the fraudsters.

Barclays argue that Mr S responded 'N' at 2:57am, but the payments conducted by the fraudsters using his mobile phone were at 2:50am. And so, it's unlikely a fraudster would give Mr S his phone back to respond 'N' as this would block the card from further use.

It's more than challenging to know at what point the phone was handed over to Mr S and back to the fraudsters to carry out this fraud. And how often it changed hands in that moment given Mr S was ultimately doing what he was told through an understandable threat to his and his wife's safety.

But importantly I need to determine if Barclays, and its systems, should have been alerted to intervene and protect Mr S from financial harm. Especially when he had told Barclays a payment to the casino on his credit card wasn't him.

Having looked at the statements I've been given, I'm satisfied payments of this value and frequency, and the fact that they're abroad, are highly unusual for Mr S. So I think this is something Barclays' systems should have picked up on. And given Mr S' response by SMS, I'm persuaded that despite the debit card payments being verified by CHIP and PIN, Barclays should have blocked that card too until it was able to speak to Mr S.

So as Barclays failed to protect Mr S from financial harm when it should have, I think it should refund him any transactions after he responded to the SMS.

I note funds were transferred from Mr S' savings and ISA account to his current account to facilitate the fraudulent payments. So these refunds should have interest added to them for the rate of those respective accounts from the date the claim was rejected until settlement.

I note too that around £30,000 was transferred from a charity account Mr S is a trustee of. Those funds are not representative of his loss, so Barclays should stop short of refunding any payments derived from these funds. The charity is a separate legal entity, and it is for them to raise any claims against its losses as explained by our Investigator.

Barclays say Mr S used WIFI before and after the disputed transactions. That means the fraudster would have gone into the phone settings and switch off the WIFI connectivity and this does not make any sense. But given I'm satisfied with Mr S' testimony, this meant the fraudsters had access to his phone. So why they would choose to switch off WIFI is not clear, but it's possible they didn't want to be associated with the IP address of either the hotel or its own establishment to avoid detection.

Mr S told Barclays in the first call he made to it that his wife was accompanied by the casino staff. So I don't think she would've been able to raise an alert as it suggests.

I also note that when speaking to Barclaycard, Mr S later explains he was the victim of fraud on his debit card and wants to be connected to the relevant department after getting his credit card unblocked. It's possible the credit card was first attempted to make payment to the casino, so the fraudsters moved onto his debit card when it didn't work.

But in any event, Mr S didn't need to raise a fraud against this card given no payment was made from it to the casino as it had been blocked. Nor do I think his demeanour on that call gives rise to any suspicion.

I also don't see how switching off gambling payments in his App would have been practical or at the forefront of Mr S' mind when he was in fear of his safety and surrounded by the fraudsters.

So after weighing everything up, I think Mr S failed with intent and so authorised the transactions he disputes under the provisions of the PSR's. But I think Barclays failed in its obligations to protect Mr S from financial harm and should refund him payments from when I think it should have intervened.

Putting things right

To put things right, Barclays must:

- refund Mr S any payments after he responded to the SMS and return the amounts to

the savings and ISA accounts they were transferred from. But it should not refund any payments that were derived from the charity accounts

- Pay the applicable and prevailing rates of interest on the funds returned to the savings and ISA accounts from the date it rejected his claim until settlement

My final decision

For the reasons above, I uphold this complaint in part. Barclays Bank UK PLC must now put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 October 2023.

Ketan Nagla

Ombudsman