

The complaint

Mrs L complains that Barclays Bank UK PLC ("Barclays") failed to refund transactions she didn't recognise.

What happened

Mrs L reported a large number of transactions (+170) made using her debit card that she didn't recognise. They were all made to various betting merchants and Mrs L asked Barclays for a refund. She explained that she didn't gamble and later believed the disputed transactions were carried out by a close family member (I'll refer to them as B). Mrs L also notified action fraud about the situation.

Mrs L received a temporary refund for a portion of these transactions, but after Barclays looked into what had happened, including contacting a number of the merchants to obtain further information about the transactions, they thought Mrs L herself was responsible. This was partly based on the responses from the betting merchants that indicated accounts had been set up using Mrs L's genuine details (name/address/email address and phone) plus the card details attached to her bank account. One of the accounts had also been in operation for several years. IP address data was also presented showing that the betting activity had taken place in the same locations that Mrs L carried out her internet banking from. The temporary refund was withdrawn from her accounts and Barclays declined to make any further refund.

During the investigation by Barclays, Mrs L was told that she'd receive a refund relating to some of the transactions. Barclays later said this was incorrect but later made a goodwill payment matching the earlier incorrect information regarding the refund.

Mrs L's account also received various refunds directly from the merchants, but the bulk of her claim wasn't refunded. Mrs L complained to Barclays about this and after further considering the situation, they declined to make further refunds, believing that Mrs L herself was responsible.

Mrs L disagreed with their outcome and brought her complaint to the Financial Ombudsman Service for an independent review. Both parties were asked for information about the complaint and Mrs L was able to say that:

- She thinks B was responsible.
- They (B) were around Mrs L's house a lot at the time and could have obtained the card details.
- Mrs L didn't always have her phone with her.
- Mrs L didn't provide any security information to B (for online banking access).
- Mrs L was away for some of the time, which accounted for the delay in informing the bank about the transactions.

- Mrs L didn't receive any notifications on her phone and didn't operate any betting accounts.
- Mrs L didn't receive any winnings from any betting merchants.

Mrs L was asked for further information and said that she was visiting with her mother and couldn't log on to see what was happening with her account. This explained the delay in notifying the bank. Mrs L was asked about incoming payments into her account from B which seemed to match some of the betting payments made from her account. Mrs L couldn't remember why they'd been sent by B.

Barclays provided details, including audit evidence of the disputed transactions and logs of Mrs L's mobile banking activity. Further documents were provided, including the responses from a couple of betting merchants. Their position regards this complaint was:

- Barclays records show that Mrs L confirmed to them she retained sole access to her mobile banking app and the security details used to access it are known only to her. She also confirmed she hadn't been received any suspicious messages or request for private information.
- Some of the payments to the betting companies required additional security steps carried out through Mrs L's phone.
- The details held by the betting companies matched Mrs L's genuine information including her email and current phone number (which also matched the details Barclays held).
- IP address data matched Mrs L's use of her mobile banking app and those details received from the betting merchants.
- Mrs L was accessing her mobile banking whilst the betting was being carried out, meaning she would have been aware of the activity on her account (but didn't notify Barclays at the time) and this is gross negligence.
- Mrs L's account received winnings from some of the betting which would only be of use to Mrs L (as it was her account).
- There were other types of betting transactions that Mrs L hasn't disputed.
- There was no evidence of third-party access to her account.

Note: IP addresses are a means to identify physical locations that online transactions are connected to and can be the actual physical location or other locations connected to the provider of the data services.

After reviewing the evidence provided by both parties, Mrs L's complaint wasn't upheld, the investigator commented that:

- Mrs L's accessed her online banking during the periods of the disputed transactions and would have been aware of them.
- Incoming payments from B suggested funds were received to pay for the betting transactions.

- Mrs L hadn't queried £440 of winnings received into her account despite denying she had accounts with these merchants, one of which was from several years earlier.
- Mrs L's phone had been used to carry out additional security steps in order to confirm certain transactions.
- The disputed activity is untypical of fraudulent use of someone's account.

After receiving the report from the investigator, Mrs L disagreed and in summary commented that:

- It wasn't her who was checking her mobile banking because she'd also given access to her husband and mother in order to monitor the account for unusual activity due to B's gambling issue.
- She didn't check the statements, only the headline figures on her account.
- After Mrs L was told that logins to her account were carried out when visiting with her mother - Mrs L said B was also with her.
- Mrs L said she used to store her online banking details on her phone which explained how B could have carried out the additional security steps.
- She felt that her version of events was being discounted.
- She was very busy which accounted for her not noticing these transactions.
- She'd complained directly to the betting merchants about her identity being stolen.
- If she'd made the transactions herself, then why would she have reported this to Action Fraud?
- Mrs L provided a letter from Barclays confirming fraud on her account from a separate claim.

As no agreement could be reached, the complaint 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 Mrs L liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them.

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

Unless Barclays can show that consent has been given, it has no authority to make the payment or to debit 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 Mrs L responsible for the disputed transactions or not.

It's Mrs L's case that B was responsible for the 170 + disputed transactions made from her account, whilst Barclays believe the evidence shows they were made by Mrs L.

I noted that Mrs L believed her version of events was being discounted. My role here is to make a finding based on all the available evidence, including all of Mrs L's submissions. Whilst I haven't discounted Mrs L's evidence, I have taken a view on some of her submissions, which I'll go on to explain.

Having examined the available evidence concerning Mrs L's complaint, I've found it difficult to sort through the changes in her version of events. I'd expect to see some differences, particularly when the story is recounted several times over a period of months. But Barclays records show that Mrs L confirmed she had sole access to her account and associated security details, this later changed to allowing other members of her family access to the account (to monitor B's betting activity). The latest change to who had access to her device and security details was only made once it was raised by the investigator's report concerning the use of online banking. It's difficult to reconcile who actually had access due to the quite different versions given by Mrs L.

Mrs L explained that at some point, she visited her mother (who was elsewhere in the UK) and when it was pointed out that there were disputed transactions made during this period from that same location, Mrs L said B was also with her (having not mentioned this before).

Mrs L denied opening any of the betting accounts, but the merchants confirmed that they held genuine details about Mrs L, including her current mobile phone number. Some of the transactions required extra security steps which were carried out using Mrs L's phone.

Mrs L said B had access to this and the banking login details were recorded on the phone. This meant that B could have intercepted the messages from the merchants and responded to the additional checks on some of the transactions.

When asked about the online usage of her phone and the likelihood that Mrs L knew about the transactions, she explained that it wasn't her (because she'd given access to her family). I found this difficult to understand as it's Mrs L's case that access to her online account was provided to other family members for the specific reason to check that B wasn't using it for betting purposes.

If indeed this was the case, then I can't comprehend why the card wasn't cancelled and the banking logins renewed to prevent B accessing the account. Also, if the banking logins were made by her family checking on B, then why wasn't the matter raised earlier? Presumably, if they were concerned that B was using Mrs L's account, then the sole purpose of checking the online banking activity was to prevent that, but here that didn't happen for some time.

Mrs L denied betting, but there's evidence that various other transactions had been made to other betting merchants not disputed by Mrs L and various winnings weren't raised as an issue by her either. It could, of course be that Mrs L wasn't aware of further use of her account (by B) which could account for not raising them – but I don't think that's the answer here.

Mrs L couldn't explain why the numerous payments made by B were paid into Mrs L's account. If B was using Mrs L's account without her permission, then why were there so many transfers into the account? It also raises the question that why would B need to use

Mrs L's card and account as she had her own funds that she was paying to Mrs L? It makes little sense to me that B would need to risk using Mrs L's account when she was paying money into Mrs L's account – why not just carry out the transactions directly?

Mrs L has also said she hadn't noticed these transactions because she was very busy. Whilst I don't doubt that Mrs L had other matters to attend to, the breadth of these disputed transactions and the large number of them seem to make it unlikely B could continually take Mrs L's phone and use it in support of her betting purchases without discovery by Mrs L or other family members. These transactions took place at most hours throughout the day and night – it just doesn't seem plausible that B could do this without being found out.

I've also considered the notification to action fraud by Mrs L and the fraud letter from Barclays. Mrs L argued that she wouldn't have notified action fraud if she wasn't a victim of fraud. I can't say why she did notify them, but overall, the evidence points towards Mrs L making these transactions or at the very least allowing someone else to use her account. I note that the letter she received from Barclays refers to a different claim and isn't related to this complaint, so whilst I can see Barclays confirmed she was the victim of fraud – it isn't related to these transactions.

I'm afraid I didn't find Mrs L's explanations plausible and the evidence that I've considered leads me to the conclusion that, on the balance of probabilities, it was more likely than not that Mrs L authorised or allowed her card details to be used to make the payments. As I've made a finding regarding authorisation, I won't go on to consider gross negligence.

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 Mrs L to accept or reject my decision before 29 December 2023.

David Perry
Ombudsman