

The complaint

E, a limited company, has complained Barclays Bank UK PLC won't refund them for disputed cash machine withdrawals.

What happened

Miss K is a director of E and represents them in this complaint. For ease I'll refer to Miss K throughout.

Miss K's wallet was stolen on 21 June. This included her personal and business cards. Within half an hour of the theft, three cash machine withdrawals were made using E's debit card. £700 in total was withdrawn.

Miss K asked Barclays to refund E's losses as these transactions were unauthorised. Barclays disputed these were fraudulent and wouldn't refund them.

Miss K brought E's complaint to the ombudsman service.

Our investigator felt it was most likely, based on the evidence, that Miss K had kept a record of the PIN for E's debit card in her wallet. This would amount to gross negligence so she couldn't ask Barclays to refund E.

Miss K disputed this outcome and has asked an ombudsman to consider E's complaint.

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've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to E's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are exceptions to this and that would include if the customer had acted with gross negligence or intent to allow any security details – including the card and PIN – to be used by someone else.

To help me come to a decision, I've reviewed the evidence Barclays provided as well as what Miss K has told us.

I note Barclays has provided no evidence to suggest Miss K acted in a grossly negligent manner. In fact, they seemed slightly dismissive of the fraud that took place here which I find concerning.

Our investigator's view of 11 October goes through the details of what happened. Like our investigator, I'm in no doubt Miss K was a victim of theft. Her wallet was stolen and a card, for E's account, was used without their authorisation.

However, having said that along with my conviction that Miss K didn't make or authorise the disputed debit card withdrawals, I'm sorry to say that I do believe Miss K has acted in a grossly negligent manner by keeping a record of the PIN with E's debit card. I say this because:

- This was the only card within Miss K's wallet which was used fraudulently. This wasn't a card that Miss K used very often and in fact records show the PIN hadn't been used since February. When Miss K got a replacement card, she was unable to recall the PIN and had to check it. This suggests to me that she could easily have kept a record of that PIN with E's card. There's certainly no record that she'd changed the PIN when she first received it to something more memorable. And based on other cards not being used fraudulently, I'm satisfied the PIN wasn't the same for all of Miss K's cards.
- It's likely that Miss K's other cards would have PINs that she more easily recalled as she'd be using those more regularly. So, I don't doubt her testimony that she didn't keep PINs with her cards in general.
- There are 10,000 possible four digit PINs. It's too much to expect that an opportunistic fraudster would be able to guess Miss K's PIN.

I'm afraid that the only possible explanation of what happened here is that Miss K kept a note of the PIN for E's debit card in her wallet. This constitutes gross negligence as confirmed within the guidance of the Financial Conduct Authority.

It wouldn't be fair and reasonable of me to ask Barclays to do anything further.

My final decision

For the reasons given, my final decision is not to uphold E's complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 15 January 2025.

Sandra Quinn
Ombudsman