

## **complaint**

Mr G complains that Barclays Bank Plc has held him liable for transactions on his account that he says he neither made nor authorised.

He wants Barclays to credit his account with the value of the disputed transactions

## **background**

The disputed transactions include 'point of sale' payments to merchants, cash machine withdrawals and online payments. The total value of the transactions, which took place over five days, is £23,416.85.

The bank decided to hold Mr G liable for the transactions as they were made by use of a new card that was issued after Mr G reported that he'd had problems with his existing card. Barclays says that it told Mr G the new card would arrive in two days and it was despatched on 23 September 2015 – but it was only reported as not received on 2 October 2015. The disputed transactions had taken place by then.

The bank was satisfied that the transactions were made using the new card and by the correct entry of the personal identification number ("PIN"). And the bank couldn't see how the transactions could have been made without Mr G having authorised them or acted with sufficient carelessness in securing the PIN, such that he should be held liable in any event.

Our adjudicator noted that Mr G had received personal loan monies of £35,000, to finance a new business – the bank had suggested these funds were the ones involved in the alleged fraud. But they were received on 7 August 2015 and spent by 21 August 2015. So the adjudicator didn't agree with the bank. And the adjudicator was satisfied that Mr G was looking to start a new business venture.

Mr G had told the adjudicator that he couldn't think how anyone else could have learned the PIN or his online banking details. And even the online transactions were made after someone logged on, entering the PIN as part of the process. No explanation can be provided as to how a fraudster came to know the PIN, but there's CCTV footage of someone making the cash withdrawal and it's accepted that this isn't Mr G.

Also, as regards the new card, the adjudicator assumed it should have arrived at Mr G's home address on 28 September 2015. And the disputed transactions were all made in, or originated from, the city Mr G lives in, starting from 29 September. Mr G says, though, he was a considerable distance from home when the transactions took place and there's evidence of failed attempts to use the old card in the place where Mr G says he was.

The bank had also relied, in coming to its conclusions, on a fraudster not knowing the balance on Mr G's account – it said that no balance enquiries had been made. But the adjudicator found that a balance enquiry was made the night before the first disputed transaction and access was gained to Mr G's online banking facility. By accessing the online banking facility, a fraudster would be able to see the account balance; and there was also a second balance enquiry before the final withdrawal from a cash machine.

On balance, the adjudicator considered it was more likely than not that the transactions weren't authorised by Mr G. She thought it entirely possible that the disputed transactions could have been the responsibility of someone close to Mr G, but without Mr G knowing who.

Mr G can't identify the person in the CCTV footage, but that doesn't mean that they weren't acting for someone Mr G does know.

She was persuaded, on balance, that the person close to Mr G, could know the PIN, be able to intercept the card and be able to know the status of the account before arranging for the disputed transactions to be made. She therefore recommended Barclays refund to Mr G's account the value of the disputed transactions and pay interest to Mr G.

Barclays has asked that the complaint be reviewed by an ombudsman.

### **my findings**

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 come to the same findings and conclusions as the adjudicator.

Barclays has expressed doubt about the integrity of the account's usage and the loan monies. It accepts the loan monies were spent before the fraud commenced, technically, but it says that there were gambling refunds to the account and it considers that the loan could be said to have reimbursed gambling losses. The bank accepts that planning permission was applied for, but denied, for the business venture.

Indeed, the bank speculates that the loan might not even have been for reasons of financing a business venture. It says that there's no evidence of business related spending beyond planning permission being denied and the loan was only then taken out, before the replacement card was ordered and the fraud claim made. This concerns the bank.

The bank is also concerned about the extent of gambling transactions on the account, given Mr G was looking to start a new business. And it remains concerned that no one could have known the PIN unless Mr G gave it to someone. Finally, Barclays suggests that Mr G has misused Barclays' loan monies. It is concerned with the integrity of Mr G's claims.

I can never now know for certain what happened. So, where evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities; that is, what I consider is most likely, given the evidence that is available and the wider surrounding circumstances.

Here, I recognise that the bank has concerns about the likelihood of Mr G being a victim of fraud, based both on the facts of the case and on its perceived integrity of Mr G's claims.

Of course, I've taken all of that into account. I agree that the transactional history on the account might be said to not represent what one might expect to see for the account of someone, in a position as Mr G describes himself. And I've also had regard for the timing of events, in particular in the context of Barclays' concerns.

But, in simple terms, the bank may hold an account holder liable for transactions only if sufficient evidence exists to show either that they made (or were involved in) the transactions themselves or that it was made possible by failing to take an appropriate level of care of the card and any account access PINs and passwords.

And I'm satisfied that, on balance, Mr G didn't make the transactions himself. He's demonstrated that he wasn't in the same part of the country as where the transactions were made, or originated from, for at least some of the transactions. The bank's CCTV footage also, clearly, shows it wasn't him that made a significantly sized cash withdrawal, in branch.

Mr G has also provided a compelling explanation about his business venture, the loan monies that were paid into his account and his circumstances around the time of the fraud, including that he did not make or authorise the transactions.

And while there's no obviously identifiable point of compromise, I consider it entirely possible that someone close to Mr G has been able to identify the PIN from previously being around Mr G – without there being any provable event that could be identified as gross negligence on Mr G's part – and then intercepted the card before Mr G received it.

In short, talking everything into account, I don't consider the bank can adequately demonstrate that Mr G allowed for the disputed transactions to be made or has acted with the necessary lack of care in the security of the card and PIN, such that it's entitled to hold Mr G liable for the transactions.

In light of what I've said, I agree with the adjudicator's proposed settlement of the complaint.

### **my final decision**

My final decision is that Barclays Bank Plc should pay to Mr G, in full and final settlement of this complaint, £23,416.85 plus interest calculated at 8% per annum simple. The interest calculation should be made on the amount of each separate payment within the total sum lost, from the date the payment was made, until the date of payment.

If it's considered that tax should be deducted from the interest element of my award, Mr G should be provided with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 May 2017.

Ray Neighbour  
**ombudsman**