

complaint

Mr A complains about the way that Barclays Bank Plc has dealt with his account and that the bank has ended up holding him liable for a debt on the account that he says he should not be responsible for.

background

In September 2012, a cheque was deposited into Mr A's account that subsequently was found to be fraudulent. There were a number of transactions on the account which left it significantly overdrawn. The account was closed and Mr A was held liable for the debt by the bank.

Mr A says that sometime in late 2012 – he cannot recall when, he lost his card and reported the loss to Barclays. He says a new card was sent but he did not receive it. Later, Mr A went to a Barclays branch to change the bank's record of his address but he was told that the account was closed. Mr A says he was not told why and he did not ask.

In 2014, Mr A attempted to open an account but was unable to do so. He identified that a debt of approximately £3,000 was recorded on his credit file. Mr A then contacted Barclays and was told about the fraudulent cheque.

Our adjudicator was satisfied that the card used to make the transactions that created the debt was the same card that Mr A had been issued with and had used to make genuine transactions. Therefore, if the card was lost, the person who made the transactions would have also need to have known the personal identification number ("PIN") to make the disputed transactions.

There is no record of a new card being issued and no explanation could be provided to the adjudicator of how someone was able to gain possession of the card and know the PIN. Also, there was no record of Mr A contacting the bank to report the card as lost or stolen. It appeared unusual to the adjudicator, also, that when Mr A was told his account was closed – an account where wages were paid into – he did not ask any further questions as to why.

The bank's records indicate that Mr A first contacted Barclays about the account in July 2014 and they say that Mr A wanted to use the account and set up a payment plan to pay for the overdraft. This contradicts a note made later in July 2014 when it is recorded that Mr A did not want to pay for any of the overdraft. Again, the adjudicator questioned why Mr A would want to pay off a debt he did not know of and says he was not responsible for.

On balance, the adjudicator did not recommend that Barclays should clear the overdraft debt or amend Mr A's credit file. Barclays though accepted that Mr A had been charged fees on the account which he should not have and it offered to refund these, £453.00. It also accepts it could have handled Mr A's complaint quicker and offered £100 compensation for that.

Mr A has asked that his complaint be reviewed by an ombudsman. He has not offered any new evidence or arguments but he maintains that he had no involvement in spending against the fraudulent cheque and he should not be liable for the debt on the account. Mr A expects an investigation to discover who paid the cheque in and CCTV to be examined.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having done so, I have broadly come to the same findings and conclusions as the adjudicator. Ultimately, 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 to have happened, given the evidence that is available and the wider surrounding circumstances.

I have taken into account what Mr A has said as to his recollections of what has happened. But, of course, it remains that I cannot be certain as to the events that took place. And I also have to take into account the other evidence available to me.

There is inconsistent and incomplete evidence as to whether the card was lost or stolen and when this was reported to the bank; there is no possible explanation provided as to how the PIN could have been known by another party – and I am also satisfied that the genuine card and PIN were used; and the evidence, broadly, simply does not suggest that Mr A has been a victim of fraud, e.g. the bank's notes – which I have no reason to dispute the integrity of, record that Mr A was at one time prepared to repay the debt and this is unlikely to be the position of someone who has been defrauded.

Of course, I cannot know for certain what happened. But, I am not persuaded that CCTV footage would establish the extent to which it is appropriate to hold Mr A responsible for the debt, regardless of whether he paid the cheque in or made the transactions himself. Indeed, on balance, I have to consider that it is more likely than not that Mr A made or authorised the transactions that have led to the overdraft debt being owed to the bank and for which Mr A is being held liable. And, given what I have said, I cannot see any basis on which I can fairly and reasonably require Barclays to write off the debt at issue in this matter.

It is appropriate, however, for Barclays to pay the refund of the charges that is offered and the compensation of £100 for the delayed handling of Mr A's complaint.

my final decision

My final decision is that Barclays Bank Plc should refund £453 of charges incurred by Mr A on his account and pay £100 compensation to him.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 7 April 2015.

Ray Neighbour
ombudsman