

complaint

Miss T has complained that Barclays Bank Plc is holding her liable for transactions on her account that she denies having made or authorised.

background

Miss T opened a savings account and deposited £2350. But she says that she did not receive her card and personal identification number ("PIN"). Those funds were removed from the account by a series of cash machine withdrawals which Miss T says she did not make, nor was she aware of.

Our adjudicator recommended that the bank should not hold Miss T liable for the transactions. She concluded that it was more likely than not that Miss T did not receive the card and PIN, having been intercepted in the post, from the bank to Miss T, by a third party. And therefore she did not make or authorise the cash withdrawals.

The adjudicator noted that that the card and PIN were sent to Miss T's home address on different days. But, having taken account of Miss T's personal circumstances, including her living and study arrangements, and having found Miss T's evidence credible, she was persuaded that Miss T did not receive the card and PIN. She considered it was more likely that the card was intercepted by a third party, possibly someone else present at the property when the card and PIN arrived.

The adjudicator also noted that prior to the first transaction being made, a balance enquiry of the account was made at 11.46pm at a cash machine a number of miles from Miss T's home. This, along with the pattern and locations of disputed cash withdrawals, suggested to the adjudicator that the person who withdrew the money was unaware of the balance on the account and was a third party fraudster.

The adjudicator recommended that the bank refund £630 to Miss T's account. She understood this to be the remainder of the value of the disputed transactions after the full amount had been credited back to the account - while the bank investigated the fraud - and after Miss T had withdrawn £1720. She also recommended that Barclays pay compensation of £100 for distress and inconvenience caused to Miss T and amend her credit file if any negative information has been recorded on it.

Barclays has asked for an ombudsman to review the complaint.

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 come to the same findings and conclusions as the adjudicator.

Barclays has said:

- the card and PIN were issued to Miss T at her home address, to arrive on different dates;
- there has never been any suggestion made to the bank that the address that the card and PIN were sent to – Miss T's home address – was not safe to use;
- Miss T did not query the non-receipt of the card and PIN in a timely manner;
- the bank cannot be responsible for Miss T not having received the card; and

- the pattern of the withdrawals was not indicative of a fraudster being involved.

I accept that the bank did not act inappropriately in sending the card and PIN in the manner it did and it is not responsible for ensuring that they are received by the card holder. I also agree that the bank was not on notice that Miss T's address was unsafe to use.

That all said, it is also the case that it is not suggested that the address of Miss T should have been considered unsafe – merely that in the circumstances of the card and PIN being received at the property, it was conceivable that they were intercepted by a third party and made use of without the knowledge of Miss T. Nor is it the case that Barclays is responsible for ensuring that Miss T receives the card and PIN; however, in the event that the card and PIN are intercepted by a third party without the account holder's knowledge and transactions are made also without the account holder's knowledge, it would be inappropriate for the account holder to be held responsible for those transactions.

I do not consider that Miss T left reporting that the card and PIN had not been received so long as to raise undue concern about the reasons for that and I do find the nature of the transactions suggestive of fraud. A balance enquiry was undertaken before the cash withdrawals commenced and there were further balance enquiries made, including immediately before the last cash withdrawal which removed the remaining funds from the account. This provides some explanation of why there was no attempted use of the card after then – let alone after Miss T reported non-receipt of the card and PIN.

The cash withdrawals also occurred on consecutive days and while the bank suggests a fraudster would have attempted a counter withdrawal to remove more cash, quicker, I am not persuaded that all third party fraud would occur in that way. Miss T has also provided a compelling explanation of her version of events, how she did not make the cash withdrawals and how another party may have.

In light of all I have said, I do not consider it fair and reasonable for Barclays to hold Miss T liable for the disputed transactions. I therefore agree with the adjudicator that the bank needs to adjust Miss T's account accordingly, pay compensation of £100 and amend the credit file as necessary. I understand that Miss T is still operating this account and the account is overdrawn due to Miss T having spent funds that were credited back to the account while an investigation took place but the bank then re-debiting the full value of the disputed transactions. In that case, Miss T is due a further refund of the full value of the disputed transactions.

my final decision

My final decision is that Barclays Bank Plc should, in full and final settlement of this complaint:

- refund £2350 to Miss T;
- pay compensation to Miss T of £100; and
- remove any adverse entries made to Miss T's credit file, associated to the matters complained of here.

Ray Neighbour
ombudsman