

complaint

Mrs W has complained that Barclays Bank UK PLC won't refund a series of card payments which she says she didn't make or otherwise authorise.

background

I sent my provisional decision on 6 December 2019. A copy of my provisional decision is attached and forms part of this final decision.

My provisional decision sets out the background of this complaint. It explains why I thought the complaint should be upheld.

I said I'd consider anything else anyone wanted to send me – so long as I received it by 20 December 2019. But neither side have sent me anything new to consider.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither Barclays nor Mrs W have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusions as before – that it's most likely Mrs W did not make these payments or fail to keep her account safe either intentionally or with gross negligence; and that Barclays should keep Mrs W's account open and compensate her for the distress and inconvenience it caused.

putting things right

Barclays Bank UK PLC should:

- refund the disputed payments that it has not already refunded;
- refund any interest or charges that Mrs W incurred because of Barclays debiting the disputed transactions;
- pay simple interest at 8% a year for each refunded payment, from the date Barclays last debited it to Mrs W's account until the date it's given back[†];
- undo the closure of Mrs W's account; and-
- pay Mrs W £300 for the trouble and upset it has caused.

[†] HM Revenue & Customs requires Barclays to take off tax from this interest. Barclays must give Mrs W a certificate showing how much tax it's taken off if she asks for one.

my final decision

For the reasons I've explained above and in my provisional decision, I uphold Mrs W's complaint about Barclays Bank UK PLC, and direct Barclays Bank UK PLC to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 30 January 2020.

Adam Charles
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mrs W has complained that Barclays Bank UK PLC won't refund a series of card payments which she says she didn't make or otherwise authorise.

what happened

In April and May 2018, Mrs W's card details were used to fund an online gambling account. There were 323 payments made using her card, totalling £2,580.02.

The gambling merchant had been given Mrs W's name, address, and date of birth; as well as photos of her card, bank statement, birth certificate, and marriage certificate. The mobile phone number and email address used for the account do not match the contact details that we or Barclays have for Mrs W, and she says she doesn't recognise them.

Another £108 of payments were made to the gambling account by being charged to a mobile phone bill, using the number that Mrs W doesn't recognise.

Mrs W said she kept her card in her bag, and kept the bag in her home in no specific place. She said she never gave her card or card details to anyone else, and never authorised anyone else to use her card. She suspected the transactions were made by a person who lived with her, who was a compulsive gambler. She said she had this person removed from her home after discovering the payments. Mrs W explained that she's disabled, can't get around easily, and has severe depression. She suspected that the person living with her took advantage of this.

Barclays held Mrs W liable for the disputed payments, saying that the merchant's information indicated that Mrs W had made or authorised the payments. However, Barclays did acknowledge that Mrs W was in a vulnerable position, and it refunded £603 of the disputed payments as a goodwill gesture. The remaining £1,977.02 is still in dispute.

Barclays also said it would close Mrs W's account, as well as a family member's account that Mrs W had control over. It has not given a reason for the account closures. Mrs W says this caused her great distress, and she had to arrange for her carer to help her pay her direct debits. Barclays then agreed to freeze the charges on her account and keep it open until our service decided this complaint.

Our investigator felt that given the information the merchant had about Mrs W, it seemed most likely that the account was set up with her permission. And he noted that she'd been otherwise using her bank account normally, so he felt it was most likely she'd have become aware of the payments when running her account. So he thought it was fair for Barclays to hold her liable for the disputed transactions.

Mrs W disagreed with our investigator and asked for an ombudsman to look at her case, so the complaint's been passed to me to decide.

my provisional 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 that, I'm planning to uphold Mrs W's complaint, and I'll explain why.

Barclays can only hold Mrs W responsible for these payments if she authorised them, or if she failed to keep her account secure either intentionally or because of acting with a very significant degree of carelessness. Otherwise, Barclays has to refund the payments.

I'm satisfied, from the bank's technical evidence, that Mrs W's correct card details were used to make the disputed payments. This is not enough, on its own, for Barclays to hold her liable. So I also need to think about whether the evidence suggests that it's most likely Mrs W consented to the payments or not.

The only reason Barclays has given for saying that Mrs W consented to the payments is the information that the merchant received. But if, as Mrs W has claimed, the person living with her made the payments, then it is completely plausible that they'd be able to get a hold of her card and documents without her permission. And they'd only need them for a very short time in order to take a photo of them.

The mobile phone and email address used do not appear to be Mrs W's. They don't match the contact details that we or Barclays have for Mrs W, and she says she doesn't recognise them. That indicates that it wasn't Mrs W who was using the gambling account.

Further, the unrecognised mobile phone number was used to make £108 of payments. These were billed to the mobile phone account, and not to Mrs W's bank account. And Mrs W does not seem to have ever mentioned the £108 of payments – for instance, she didn't report them, and seemed to be unaware of them in her contact with ourselves and Barclays. She's only reported the £2,580.02 that debited from her bank account. And again, she says she doesn't recognise the mobile phone number used on the account. If Mrs W was aware of the £108 of payments, I'd have expected her to query them along with the others. But given that these were made using details that weren't linked to her, and given that Mrs W has never queried them, I'm persuaded that she was not aware of them. This indicates that it wasn't her making the payments, and that she may not have known they were going to be made at all. And that implies that they were not made with her permission.

I asked for Barclays' records about balance checks, and did not find any evidence that Mrs W had checked her balance at an ATM, online, or by telephone banking during the period of the disputed transactions. And Mrs W said she only checks her statements every six months or so. While generally, I might expect a customer to monitor their account more closely than Mrs W did, it remains that this is how she chose to monitor her account. And I'm still satisfied that even though she was otherwise using her bank account, I've not seen any evidence that she was aware of the disputed transactions before she reported them.

In summary, Mrs W's testimony has been consistent and plausible, and I've not been given any significant reasons to doubt what she said happened. Mrs W has explained that she's in a particularly vulnerable position, and Barclays has acknowledged this. In this particular case, it is completely plausible that someone close to Mrs W would be able to carry out these payments without her permission. And the evidence does not show that Mrs W was aware of these payments earlier, nor that she was aware of the other £108 of payments that did not debit her bank account. This indicates that the payments were not made with her permission.

So after carefully balancing the evidence at hand, I think it's more likely than not that Mrs W did not make these payments or give someone else permission to make them.

I have also not seen any evidence to show that Mrs W acted recklessly here, or that she intentionally failed to keep her account safe. Mrs W has told us that she kept her card in her bag. This is not unusual. And while it meant that it was possible for someone living with her to take the card, I don't think Mrs W had sufficient reason to think her card would be unsafe when kept in her own bag in her own home. Further, while I acknowledge that Mrs W could have monitored her account more closely, I do not think that that is sufficient to conclude that she acted recklessly, or in such a way that means it's fair for Barclays to hold her liable for the transactions under the relevant rules here.

So I currently think that Barclays should refund the disputed payments.

closing Mrs W's account

When Barclays held Mrs W liable for the disputed payments, it also decided to close her account. Mrs W says this has caused her great distress when she already suffers severe depression and is vulnerable. She fears she won't be able to pay her living costs and is having to make arrangements for her carer to make payments for her.

Mrs W's account is a basic account. Banks can only close basic accounts for very specific reasons. I've looked at the applicable reasons and none of those appear to apply to this case. Indeed, Barclays has declined to give any reasons at all for the account closure. So I do not think that Barclays has sufficient reason to close her basic account.

Barclays appears to be waiting for our service to make a decision about the disputed payments before it resumes dealing with the account closure. So it seems that the issue of the disputed payments and the issue of the account closure are closely linked – it could be that Barclays wants to end its relationship with Mrs W because of the disputed payments. But as above, I don't think Mrs W authorised the disputed payments, and even if she had, that would not be sufficient reason on its own for Barclays to be able to close her basic account.

Barclays has also suggested that it will be closing a family member's account. From what information Barclays has provided, I cannot see why it is closing the family member's account other than because Mrs W has authority over it and it wants to end its relationship with Mrs W. While my decision here is focused on the impact of Barclays' actions on Mrs W's account that she holds in her sole name, I hope that Barclays will consider the impact of my findings on its decision to close Mrs W's family member's account too, given how it's chosen to link these accounts and issues, and given our service's approach.

This issue seems to have caused Mrs W a great deal of stress. So my provisional decision is that Barclays should keep Mrs W's account open, and pay her £300 compensation for the trouble and upset it has caused in trying to close it.

putting things right

I propose that Barclays Bank UK PLC:

- refunds the disputed payments that it has not already refunded;
- refunds any interest or charges that Mrs W incurred because of Barclays debiting the disputed transactions;
- pays simple interest at 8% a year for each refunded payment, from the date Barclays last debited it to Mrs W's account until the date it's given back[†];
- undoes the closure of Mrs W's account; and-
- pays Mrs W £300 for the trouble and upset it has caused.

[†] HM Revenue & Customs requires Barclays to take off tax from this interest. Barclays must give Mrs W a certificate showing how much tax it's taken off if she asks for one.

my provisional decision

For the reasons I've explained, I plan to uphold Mrs W's complaint, and to direct Barclays Bank UK PLC to put things right in the way I set out above.

Please could Barclays and Mrs W send me any more information or comments to look at by 20 December 2019. After that, I'll reconsider the case.

Adam Charles
ombudsman