

## **complaint**

Mr R reported to Barclays Bank Plc a payment to a gambling website that he says he did not authorise. Mr R complains that Barclays has held him liable for it.

## **background**

The circumstances leading to this complaint were set out in my provisional decision of August 2013, a copy of which is attached and forms part of my final decision. I was minded to uphold the complaint as, taking into account all the arguments and evidence presented, I was not adequately persuaded that Mr R was responsible for the transaction in dispute and I concluded that it was more likely that he was a victim of fraud than he authorised the payment.

I invited the parties to provide me with any further submissions they wished to make in response to my findings.

Mr R accepted my provisional findings and had nothing further to add. But Barclays did not agree with my provisional findings and provided various comments that suggest how Mr R might have been involved in making the payment and how the circumstances suggest that a fraudster was not involved. It said:

- a fraudster would not have needed to use elements of Mr R's email address, they would not have known how to create an address so similar to that of Mr R and it could have been done with the agreement of Mr R;
- the circumstances behind the gambling transaction were such that it looked to the bank like the payment was not made by a fraudster. A fraudster risked being identified before the gambling transaction took place and they needn't have gambled at all. And the payment was subject to entry of a 'verified by visa' password;
- there is no explanation as to how a fraudster knew the postal address and date of birth of Mr R;
- the monetary value of the disputed transaction did not seem to the bank to suggest that the transactions was undertaken by a fraudster, given the availability of funds and on what terms;
- the IP address used could have been that of a mobile phone owned by someone known to Mr R; and
- Mr R should have been aware of the payment being made, that he says he did not authorise, much sooner than he was.

## **my findings**

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

As I said previously, it is inconclusive as to what has happened in relation to this payment. I was not adequately persuaded that Mr R was responsible for the transaction in dispute before and I have had careful regard for what the bank has said in response to my provisional decision. It has raised further legitimate points that prompt concern about whether Mr R has been a victim of fraud or whether he was somehow involved in making the payment.

Indeed, it is not possible to rule out entirely that the payment that Mr R disputes making or otherwise authorising was made with his knowledge. But I do not consider it a safe conclusion to say that Mr R was so involved. It seems to me, still, that it is more likely than not that Mr R was a victim of fraud although I cannot say precisely how the fraudster obtained certain bits of information; largely, the bank's arguments seem to me to suggest that Mr R may have carried out the transaction, or was aware of it, rather than show that he did.

The bank also suggests the surrounding circumstances do not look to it like it was carried out by a fraudster but I am persuaded that this is not enough to say that a fraudster was not involved. In conclusion, I do not consider that it can be adequately shown that Mr R made, or otherwise authorised, the transaction. As such I do not consider it fair and reasonable that Mr R be held liable for it.

For these reasons I do not depart from my provisional decision.

### **my final decision**

My final decision is that I uphold this complaint and, in full and final settlement of the complaint, I require Barclays Bank Plc should credit Mr R's account with £1,000 and reconstruct the account such that any interest and charges previously applied to it, as a result of the £1,000 having been debited, should be credited to it also.

Ray Neighbour  
**ombudsman**

## EXTRACT FROM PROVISIONAL DECISION

### complaint

Mr R reported to Barclays Bank Plc ("Barclays") a payment to a gambling website that he says he did not authorise. Mr R complains that Barclays has held him liable for it.

### background

Our adjudicator established from the gambling website that:

- the bet was made online through a gambling account where the named account holder had the same first name as Mr R but a different last name – the account was opened around the time that the disputed payment was made;
- there is no gambling account in the name of Mr R (although Mr R had said that he did have an account but had not used it since 2010);
- the email on the gambling account was one ending 'gmail.com';
- when a new account is set up, the account holder is sent a welcome email;
- the bank account information that was linked to the gambling account was Mr R's (Mr R believes he has been the victim of identity theft);
- the three digit security number from the back of the card was entered and the 'verified by VISA' details for the card used were entered;
- the IP address of the computer was known.

The adjudicator did not recommend that the complaint be upheld. She concluded that in order to make the online payment, a fraudster would have needed knowledge of Mr R's card details, to set up the gambling account, or be in possession of the card. Mr R had said that the card was always in his possession, with no opportunity for someone to have obtained the card details; or remove the card from his possession, use it and then replace it.

Mr R had also said that he lives alone, his computer is password protected and no one would be able to access it. The adjudicator noted that an email would have been sent confirming the opening of the gambling account (albeit in an incorrect name) and she found it reasonable for Mr R to have noticed this confirmation email. But this was not how Mr R noticed that the account had been set up and the transaction had been made. He noticed when other genuine payments were returned as unpaid.

On balance, the adjudicator did not consider it more likely – than not - that the transaction occurred due to Mr R's identity being stolen; she considered there was no opportunity for the security of the card details to have been compromised; and there would be little benefit for an unknown party to use Mr R's account to make an online bet, as any winnings from the bet would have been placed back into Mr R's bank account. The third party would only have been able to access any winnings if they had Mr R's card, which he had confirmed was never out of his possession.

And the adjudicator was not persuaded that the location of the computer with the recorded IP address was relevant, as this only indicated which computer was being used, not who was using it. Nor did she consider relevant other incidences of alleged fraudulent gambling transactions that Mr R referred to and which were not part of Mr R's original complaint.

The adjudicator concluded that Barclays was entitled to hold Mr R liable for the disputed transaction.

Mr R asked for his complaint to be reviewed by an ombudsman.

### **my provisional findings**

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

Mr R raised, in response to the adjudicator's opinion, that:

- a fraudster could still have benefitted from winnings placed in the account in that the fraudster would still have had card details and be able to make online payments to, say, service providers or retailers;
- the IP address that the gambling website says was used is not associated with him. He has said what the IP address is for his own computer – and that differs. And the police told him that the IP address associated with the disputed transaction was for a connection made from a mobile phone with online access provided by a different phone provider than he has his mobile phone contract with;
- it is not wholly inconceivable that his card details could have been obtained by a fraudster either by observation, some form of online compromise when the card has been legitimately used, or cloning of information;
- the gambling account was established with a completely different last name to that of Mr R and also with a similar, but not identical, email address – it has the same opening (and is not related to the name of Mr R) but ends gmail.com whereas Mr R's email address ends yahoo.co.uk; therefore
- Mr R would not have received the introductory email; and
- more recently, Mr R's account has been subjected to two further attempted fraudulent transactions. He says one transaction was an attempted purchase from a large department store, which was challenged by the bank; the other was in respect of a payment from another of Mr R's accounts (not with Barclays) which he said was not authorised by him and was blocked.

The adjudicator has also looked into a transaction that was attempted, but declined, shortly after the one complained about. The payment was attempted to what appeared to be another gambling organisation but the adjudicator contacted it and it had no record of an account held by Mr R or where his genuine email address is recorded.

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 cannot be certain how Mr R's card details were compromised but I cannot rule out that he has been a victim of fraud insofar as his card details have been obtained illicitly. And it would seem that the gambling website would have sent an email to an address that was not Mr R's. I accept that the closeness of Mr R's email address and that recorded by the gambling website could be reflective of a fraudster trying to replicate Mr R's details closely. And it remains that the gambling account was set up, on the day that the transaction was made, in a different name to that of Mr R.

Other activity on the account, and the evidence submitted by Mr R about the IP address involved, also suggests to me that a fraudster may have been involved.

In this case, it is certainly inconclusive as to what happened. But, taking into account all the arguments and evidence presented – and specifically the above points - I am not adequately persuaded that Mr R was responsible for the transaction in dispute and I conclude it more likely that he was a victim of fraud than he authorised the payment. As such I am inclined to uphold this complaint.

**my provisional decision**

For the reasons set out above, and subject to any further evidence or representations that I might receive by 30 September 2013, my provisional decision is that, in full and final settlement of the complaint, I propose Barclays Bank Plc should credit Mr R's account with £1,000 and reconstruct the account such that any interest and charges previously applied to it, as a result of the £1,000 having been debited, should be credited to it also.

Ray Neighbour  
**ombudsman**