

## **complaint**

Miss J complains that Barclays Bank Plc has held her liable for a number of transactions that she says were made fraudulently by an acquaintance. The bank has agreed to credit her account with the value of a number of the transactions – although not the majority of those disputed – but Miss J wants the full value of the claim credited.

## **background**

Miss J says that she first became aware of a problem in October 2015. The transactions initially disputed were gambling transactions made via PayPal. After discussing the matter with PayPal, Miss J realised it could have been a close friend of hers that had made the transactions and she reported it to the police.

Miss J's friend ultimately pleaded guilty to defrauding Miss J of £40,000 and served a custodial sentence in relation to the crime. But despite this, Barclays refused to refund anything to Miss J. It considered Miss J must have been negligent with the security of her account in order for her friend to have been able to make the payments. It relied on a witness statement Miss J gave to the police, in which she said her friend had told her she'd retained the card details after Miss J had given them to her.

Miss J says that that her friend was able to obtain the card details as she was a frequent visitor to her home and was paid to clean the house. Miss J trusted her friend and says she must have obtained the card details without her knowledge. Miss J says her friend lied throughout the police interview and, supported by the fraud occurring on more than one debit card, she says she stole card details more than once.

Miss J says she suffered many personal tragedies in the run up to and during the period of the disputed transactions - November 2013 to October 2015 - which is why she hadn't been keeping a close eye on her finances and agreed to receive help around the house. She said she wasn't coping and her account was receiving regular credits while her attempted transactions were never declined. So Miss J believed all was fine with her account and she didn't check it at all, enabling the fraud to go undetected for almost two years.

After the complaint was referred here, Barclays reiterated that information received from various gambling websites meant it couldn't be certain as to how much of the disputed spending was made by the fraudster and how much might be genuine. It also provided evidence that contradicts what Miss J had said about not monitoring the account, it showing that it was being checked and regularly topped up when funds were running low.

But it offered to refund £40,000 to Miss J - the amount that Miss J's friend was convicted of defrauding her of - in full and final settlement of the complaint.

Our adjudicator didn't consider that Barclays needed to do anything further to settle the complaint. She didn't doubt that Miss J's friend had used her card to make gambling transactions without her authority. But information obtained from gambling websites showed that the accounts were set up and operated using Miss J's correct details. And Miss J agreed that the accounts were probably set up by her.

It appeared to the adjudicator that Miss J may have made some of the deposits to the accounts, and she considered that she wouldn't have been able to establish those transactions genuinely made by Miss J and those that weren't. And any winnings withdrawn from the gambling websites would have credited to Miss J's Barclays account.

It was also noted that since referring the complaint here, the amount of transactions being disputed by Miss J greatly increased – now covering a two year period - and the value of the claim rose from £40,000 to £185,879.10.

Finally, Barclays had said that Miss J had been obliged to keep an eye on the account and that if Miss J had done so, the period of the disputed transactions could have been greatly reduced. The adjudicator accepted this but also noted Miss J had described her reasons for not checking the account and it was understood that this was a very difficult time for Miss J.

But Miss J's account received regular fortnightly automated credits from her external investment of £2,500, and a number of additional transfers from that investment were also paid into the account, which funded the disputed gambling. Barclays established the additional transfers received into the account were genuinely made by Miss J.

And the transfers were often made at times when the balance of the account was low. For example, on 11 July 2014 the balance was £12.68 overdrawn and a manual transfer from the investment of £5,000 was made.

Barclays suggested to the adjudicator that the account was being monitored. Indeed, the account was regularly accessed via Miss J's mobile banking app, from her genuine telephone number at the time and the device that would have been registered for the app.

The adjudicator also noted the frequency of balance checks that occurred at cash machines during a period of the disputed transactions. As Miss J had said that throughout the period of the disputed transactions, she'd retained possession of the card, the adjudicator couldn't accept that the account wasn't being checked, as claimed.

In conclusion, the adjudicator didn't consider she could conclude that Miss J wasn't, or ought not to have been, oblivious to the activity that had taken place; so a fraud claim could have been made much sooner than it was.

She didn't consider Miss J wouldn't have had any idea as to the type and volume of spending that had been occurring on the account. And while acknowledging the traumatic events that Miss J had experienced and sympathising with her, as the account seemed - at least on balance - to have been monitored by Miss J, it remained that it took until October 2015 for the spending to be disputed.

And if a fraud claim had been raised sooner, the value of it would have been greatly reduced. The adjudicator therefore said that she wasn't minded to suggest Barclays refund the full amount of Miss J's claimed losses to her.

Bearing in mind all the evidence in this matter, the adjudicator considered that Barclays' offer to pay Miss J £40,000 was fair in all the circumstances. And she couldn't see any basis on which to recommend that Barclays pay more compensation to Miss J than the £1,000 already paid to her.

Miss J has asked that the complaint be referred to an ombudsman for review. She maintains that Barclays should pay, in full, to her the value of her losses. She says she hasn't been negligent in the management of her account. And Barclays have used the evidence of a fraudster against her, without properly accepting other evidence. Ultimately, she says that she's a victim of a crime and the bank should refund to her the losses in full.

She also said that she never performs a balance enquiry when withdrawing cash, and mostly just to withdraw £300. But the adjudicator was able to provide details of where and when this happened, using Miss J's card, all where £300 was withdrawn. And these included a time when the card was retained by a machine and which reconciled with Miss J explaining that she'd had a difficulty with a machine when withdrawing cash.

Miss J says that she didn't always monitor her bank account. She says she topped her account up when she had a payment declined. She says the volume of transactions meant that she never noticed the disputed transactions taking place. And she's explained how she'd been distracted, and suffered great trauma, at times, from monitoring the account. Miss J is also critical of Barclays' security systems.

I'm mindful that there's a significant level of detailed comment that Miss J has submitted following the adjudicator issuing her opinion about this complaint. I've not repeated all that's been said here - I've simply tried to summarise the sense of the submissions. But I've read everything carefully and had full regard for Miss J's comments in coming to my decision.

I'd like to also make clear that I'm aware of all that Miss J has submitted here, right up to the present day. I recognise that Miss J is disappointed that she wasn't able to get a representative to write on her behalf but I'd like to reassure her that I understand her concerns about the view that the adjudicator came to and I don't consider that her concerns have failed to come across because any lack of representation.

## **my findings**

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

First, I should be clear as to the basis on which I'm making this decision. It isn't disputed that Miss J's been a victim of fraud, that the fraudster's been convicted and Miss J has suffered a financial loss. I also wish to acknowledge the difficult personal circumstances that Miss J describes suffering. I have great sympathy for Miss J – but it remains that I have to decide whether or not – and if so, to what extent – Barclays should reimburse her for her losses.

Second, as regards the evidence that I've taken into account, I'd also like to be clear that I don't consider Barclays has withheld documentation that I consider would make a difference to the outcome of this complaint. And, appreciating that this a particular concern to Miss J, I should state that the witness statement of Miss J's friend is only one piece of evidence that I've had regard for and it isn't the evidence with the most material effect on my decision.

By way of background to my consideration of the complaint, I should also set out that I'm required to determine complaints by reference to what I consider to be fair and reasonable in all the circumstances. In making that determination, amongst other things, I must have regard to any relevant law and regulations, regulator's rules, guidance and standards, codes of practice and good industry practice at the relevant time.

Miss J has referred to sections of the FCA Handbook, 'BCOBS Banking: Conduct of Business sourcebook', in particular 5.1.11R. But that section can't be read in isolation to 5.1.12R which refers to circumstances where the banking customer has failed to keep the personalised security features of the payment instrument safe, from the misappropriation of the payment instrument.

I have to have regard to all of BCOBS, but there's also the Payment Services Regulations 2009. These say that *"...a payment service user is entitled to redress...only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction"*.

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

And Barclays' terms and conditions also state that it'll put information on regular statements and make them available – and the customer must check the information as it needs them to tell the bank as soon as they can if something is wrong. And there's the regulatory requirement to notify a bank if transactions are disputed as being genuine within a certain time period.

So, I need to next be clear that even where a bank's customer is a victim of fraud and has suffered a financial loss as a result of transactions made on an account, it isn't necessarily for the bank to make good the loss. As I've said, I need to have regard for all that I've referred to but then consider what's fair and reasonable in determining the complaint.

And, as regards the circumstances of this particular complaint, I find the adjudicator's explanation predominantly accurate. I accept that some correction of them has been made by Miss J, such as the basis on which the fraudster in this matter was employed by Miss J. I also don't dispute, as I've already acknowledged, the long standing, difficult circumstances that Miss J suffered in her personal life.

But Miss J originally made a claim to Barclays, in October 2015, in respect of transactions that had been made and which she disputed she should be responsible for, for a total of £40,000. And the bank has agreed now to fully refund to Miss J the full value of those transactions. Subsequently, Miss J revised her claim as to the value of the transactions that she disputed being responsible for and said to the bank, in November 2016, that she was disputing transactions - with a total value of over £185,000 - that were made between November 2013 and October 2015.

Taking everything into account, I don't consider I can require the bank to pay more to Miss J than it's offered to. It's not disputed that a fraudster improperly used funds that belonged to Miss J and to the extent that that's been proven through the courts, the bank has provided a refund.

But beyond that, while I'm *not* suggesting that Miss J hasn't been defrauded to a greater extent, I'm not persuaded that Miss J couldn't have identified the payments she disputes making much sooner. Again, while acknowledging her difficult personal circumstances, there is evidence that Miss J was aware that the payments were being made – and certainly she ought to have been.

Miss J made her claims to the bank to dispute the additional payments late and I'm not persuaded that it would be fair for me to say Barclays ought to pay to Miss J the full value of the transactions that she now disputes, given the wider circumstances in which they were made and the manner in which issues have been raised with the bank.

In light of all I've said, I don't require the bank to pay to Miss J any more than the £40,000 it's already offered to pay or additional compensation. I also consider the £1,000 it's already paid to Miss J adequate compensation for the time delays that were suffered in Barclays handling of Miss J's claim that she shouldn't be held liable for transactions on her account.

I note how passionately Miss J writes about her experiences in this matter and the effect all of this has had on her over a long period – against a background that I've already acknowledged was extremely difficult. I also appreciate that the matter has taken a long while to conclude. I can only express my sympathies with Miss J for the losses she's suffered and my regret that this matter hasn't been resolved to her satisfaction.

### **my final decision**

My final decision is that Barclays Bank Plc should pay £40,000 to Miss J in full and final settlement of her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 6 December 2017.

Ray Neighbour  
**ombudsman**