

complaint

Miss K complains that Barclays Bank UK PLC won't refund debit card transactions that she says she didn't make or authorise. It has also recorded fraud related markers against her record.

background

Miss K had an account with Barclays since early 2014. At the end of July 2014 she was arrested and remanded in custody. She was later convicted and her sentence lasted until the end of January 2018.

Between October 2014 and March 2015 a number of transactions (both credit and debit) took place on Miss K's account. She says they weren't authorised by her. A credit amounting to just over £3,200 was paid into Miss K's account towards the end of February 2015. It was all removed within a few days. Barclays was then told that the credit was fraudulent and it decided to close the account immediately. It recorded a CIFAS and Hunter fraud marker against her name. CIFAS is one of the UK's fraud alert services. The Hunter marker applies only to Barclays Group.

Miss K says that she didn't have her card on her at the time of arrest and she wasn't able to return to her home where the card was. She thinks that a friend, who had a key to her flat, might have used her card and logged on to her account, without Miss K's consent. Her PIN was on a piece of paper in her purse and her online banking log in details kept at her home. Barclays has refused to refund the disputed payments.

Miss K's complaint was looked at by an investigator who didn't think that Miss K had authorised someone else to use her account or card during the time she was in prison. He didn't think she was grossly negligent or failed with intent to keep her PIN or online banking details safe as she had these in her own home. He noted that Barclays had already removed the CIFAS marker and downgraded its Hunter marker. It had offered £200 as a gesture of goodwill but he thought Barclays should refund the disputed transactions and pay a total of £300 for the inconvenience these markers caused Miss K because she was without a bank account for about seven months.

Barclays disagreed. It said that it thought Miss K had been negligent because she allowed others to use her home. Miss K also disagreed. In summary, she didn't think that a total of £300 was enough compensation for the inconvenience the markers had caused.

my 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 so, my review of the evidence has led me to the same overall conclusions as our investigator previously set out and for much the same reasons.

The basic position is that Barclays can hold Miss K liable for the disputed payments if the evidence suggests it's more likely than not that she made them or authorised them. It's clear that she couldn't have carried out the transactions personally given the dates of her prison sentence. Barclays also accepts that Miss K didn't carry out the disputed transactions herself. It has offered, as a gesture of goodwill, to refund £200, which was the credit balance on the account at the time the first disputed transaction took place.

So I need to come to a view about whether the evidence suggests it's more likely than not Miss K authorised or consented to the payments. But for me to be satisfied that these payments were authorised, I first need to determine whether they were authenticated.

Authentication is the use of any procedure by which a bank is able to verify the use of a specific payment instrument, including its personalised security features.

Due to the passage of time, Barclays hasn't been able to provide evidence of how the payments were authenticated. But given the types of transactions, I think it likely that both the genuine card and PIN were required. But this, on its own, isn't enough for Barclays to hold Miss K liable.

I don't believe that Miss K authorised or consented to the payments. And Barclays has said that it believes the activity on Miss K's account was carried out fraudulently. But it considers that Miss K should be held liable because she failed to protect her card details. Generally account holders must take all reasonable steps to keep their cards and security details safe and must tell their bank, without undue delay, if their card is lost or stolen, or used without their consent. So Barclays can hold Miss K liable if she failed 'with intent' or was grossly negligent with her card and bank details.

Miss K has said that a friend had access to her flat where her card and bank details were kept. She thinks that this friend may have been behind the account activity. Although they can't say exactly when, Miss K's solicitors have confirmed that they entered her flat to collect all her personal possessions. I think Miss K was entitled to believe that her bank card was amongst the items collected by her solicitors. But they have now said that Miss K's purse, containing the bank card, wasn't part of the items they collected. Given this, it seems that the purse, with her card and PIN, was taken from her flat by someone else.

I think the same person also used Miss K's online banking log on details. Miss K only used on line banking once, shortly after she opened the account. The next time it was used was when Miss K was in custody. So I think it likely that someone close to Miss K carried out the withdrawals and was responsible for the fraudulent credit.

I don't think it was grossly negligent for Miss K to keep her banking details at her own home. I accept that she knew that third parties did have access to her flat, but the only person that had a key was a friend that she trusted. I'm not persuaded that this amounted to gross negligence, such that it was a serious and significant degree of carelessness. I don't think Miss K's bank details would have been uppermost in her mind when she was arrested.

After very careful consideration, and on balance, I'm satisfied that Miss K didn't authorise or consent to the transactions and I don't consider she was grossly negligent or failed with intent to keep her PIN and online banking details safe. So I find Barclays should refund the full credit of £217.28. Barclays has already written off the overdrawn position on the account following the fraudulent credit to the account. It should not pursue her for this and remove any adverse information on her credit file relating to it.

CIFAS

Barclays recorded fraud related markers against Miss K when it closed her account in 2015. Miss K tried to raise a complaint about the disputed activity on her account in June 2017 but

Barclays told her she couldn't. In September 2018, after she complained again, it agreed to remove the marker.

If Barclays had investigated when Miss K first complained in 2017, I think it is reasonable to assume that it would have removed the marker then. Barclays has suggested that it shouldn't have removed the marker in 2018 because Miss K was negligent. But CIFAS's standards for recording a marker are very high. Barclays must show there are reasonable grounds to believe that Miss K committed or attempted a fraud or financial crime. Overall I don't think it has. There's enough evidence to suggest Miss K didn't receive the funds.

As a result of the marker, Miss K had problems opening a bank account after she left prison in January 2018. So I consider she suffered difficulties because of the marker for about some seven months or so, for which Barclays should pay some compensation. It has already offered a goodwill payment of £200, but I don't think this is enough. I think a further £100 is fair.

Barclays has also recorded a Hunter marker. This only relates to the Barclays group and, as banks are entitled to decide for themselves whether or not to do business and if so on what terms, I can't ask it to remove this.

my final decision

My final decision is that I uphold this complaint. I require Barclays Bank UK PLC to:

1. Refund the disputed transactions totalling £217.28
2. Add interest at 8% simple to this amount from 31 January 2018 (the date Miss K was released from prison) to the date of the refund
3. Pay a total of £300 for the trouble and upset it has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 27 March 2020.

Karen Wharton
ombudsman