

Complaint

Mr G and Mrs G have complained that Barclays Bank UK PLC won't refund a transaction, which they say they didn't make.

Background

Mr G and Mrs G want Barclays to refund a £900 payment to a betting shop, which was made with Mr G's debit card and PIN. Mr G said he didn't authorise the payment.

Mr G said he was shopping in a supermarket on 12 August 2018 when he lost his wallet. He said he kept two debit cards in his wallet together with a written note of his PINs. One of these cards was his Barclays' debit card.

His two debit cards were used for balance inquiries at the supermarket ATM and two cash withdrawals at a nearby Post Office ATM. They were also used in a betting shop. The disputed transactions occurred between 2.36pm and 2.50pm.

He called Barclays at 3.23pm. He said he didn't recognise two transactions: a cash withdrawal for £300 and a £900 payment to a betting shop.

Barclays refunded the £300 immediately and said it couldn't do anything about the £900 as it was pending. However, after completing its investigation, it decided to hold Mr G liable for the transactions because he hadn't protected his card and PIN. It also didn't think a fraudster would use a debit card for betting transactions. It said they wouldn't gain financially, as any winnings would be paid directly into Mr G's account.

Barclays refused to refund the £900 and decided to write off the £300.

Mr G and Mrs G were unhappy with this outcome so they brought their complaint to this service.

The investigator decided not to uphold their complaint. He said Mr G had given several conflicting versions of how he lost his card but despite this, he didn't think he'd authorised the disputed transaction. However, he concluded he had been grossly negligent by keeping a written note of his PIN with his card. For this reason, he decided that Barclays was entitled to hold him liable for the disputed transaction.

Mr G and Mrs G disagreed with the investigator's view. They have asked for an ombudsman's final decision.

My findings

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

The investigator wrote a detailed view that sets out in full the facts, the transactions, the relevant regulations and the evidence. Mr G and Mrs G have read the investigator's view. So has Barclays. Therefore, I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mr G and Mrs G that I've read the file, including their comments and evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Having done so, my review of the evidence has led me to the same overall conclusions as those reached by the investigator and for broadly the same reasons. I will explain why.

In short, Barclays is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). Mr G says he didn't make the payment to the betting shop and is seeking a refund of £900. So I must first come to a view about whether or not I think Mr G authorised the payment

I'm satisfied from the bank's technical evidence that Mr G's genuine card and PIN were used to make the payment to the betting shop. But the regulations relevant to this case say that is not, on its own, enough to enable Barclays to hold him liable. So I also need to think about whether the evidence suggests that it's more likely than not that Mr G made the payment.

At this point, I would look at what Mr G has to say. Unfortunately, he has given conflicting versions about what happened. Initially, he told Barclays he lost his wallet in a supermarket and that his cards and PINs were in the wallet. He later told it he'd been threatened and forced by a man to provide his bank details and use his PIN. He also told the investigator that he'd been distracted by a man at an ATM who saw him enter his PIN and took his card. His statement changed again. He said he lost his card in the supermarket and saw a man using it at the ATM.

I'm afraid I think Mr G's evidence is largely unreliable because of these inconsistencies. So, I've looked at the technical evidence to determine whether it's more likely that Mr G authorised the £900 payment. On balance considering all the evidence, I'm not persuaded Mr G authorised the disputed payment because:

- there's no history of gambling - according to the bank statements for both accounts at the time, Mr G and Mrs G didn't gamble. So the disputed payment seems out of character for them.
- the time interval and distance between the two ATMs are short - Mr G's two debit cards were used for balance inquiries at 2:36pm and 2:38pm at the supermarket ATM.

At 2:40pm, his second card was used for a balance inquiry at a Post Office ATM. The Post Office is only a five-minute walk from the supermarket. The interval between the transactions was two to three minutes.

Mr G is in his late 70s. I don't know his fitness level, but he said he is frail. It seems unlikely he would've arrived at the Post Office within two to three minutes.

- The second debit card was used in a similar fashion. I've seen the statement for the other bank account. Mr G didn't use his debit card for that account. The transactions are mainly direct debit payments. And, again, there are no gambling transactions, other than the disputed transactions.

I think Mr G lost his wallet in the supermarket, which is what he first told the bank. But I'm afraid this doesn't mean Barclays must refund him. This is because he didn't keep his PIN safe.

The terms and conditions for his account say:

'You must do all you reasonably can to keep your payment tools safe... You must not give your payment tools to someone else or let someone else use them, **or do anything that would let someone else use them, such as writing them down in a way that someone else could understand**, keeping the letter carrying a PIN, or giving someone else access to a device like a mobile phone you keep your details on.

I've highlighted the relevant condition. It's clear that customers shouldn't write down the PIN in a way, which makes it obvious to someone else.

The relevant regulations also say that account holders must use their card in accordance with the terms and conditions governing its issue and use. And they must take all reasonable steps to keep their personalised security credentials, such as their PIN and passwords, safe.

If an account holder fails with *gross negligence* to comply with the regulations they'll become liable for unauthorised payments instead of the bank.

On balance, considering all the evidence I think Mr G was grossly negligent because he kept a written note of his PIN in his wallet with his card.

I appreciate Mr G said he hadn't memorised his PIN and this is why he kept a written note. However, when I think about what gross negligence means, I have to think about what a 'reasonable person' would do, irrespective of age, personal characteristics or circumstances. I think a reasonable person would see that it's risky keeping a written note of the PIN with the card. And if they needed to keep a written note, they would disguise it and keep it apart from the card.

I've taken into account Mr G's comment that he reported the loss of his card without delay but this was only one of his obligations, as an accountholder. I'm afraid I still had to consider whether he'd been grossly negligent.

Taking everything into account, I find, on balance, that Mr G didn't authorise the disputed payment, but he was grossly negligent with his card and PIN. It follows that it's fair and reasonable for Barclays to hold him liable for the payment.

I do understand that this must be distressing for Mr G and Mrs G and I am sincerely sorry to send such disappointing news, especially after such a long wait. I hope the reasons for my decision are clear. I thank them for their patience.

My final decision

My final decision is I am not upholding this complaint.

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

Razia Karim
ombudsman