

complaint

Miss B complains that Barclays Bank Plc allowed 15 unusual looking payments to a gambling account, for a total value of £40,300, in February 2012. Miss B says the gambling account was not in her name and she did not make or authorise the payments.

background

Our adjudicator didn't think that he could fairly ask the bank to refund the value of the transactions to Miss B's account. The payments were made to a gambling account held in the name of Miss B's former partner, but using a card issued for Miss B's bank account.

The company providing the gambling account had said that Miss B's card details were loaded on to its system during a telephone call at 9.48am on Thursday 9 February 2012 and the 15 transactions were made from 10.54am, lasting about six minutes. The payments were made online and each one required the security code from the back of the card to be input.

The bank had treated each payment as being separately and properly authorised given the correct debit card details which had been used and that the bank had no reason to suspect that those details weren't in the secure possession of its customer. The company providing the gambling account had also previously received payments from Miss B's bank account.

In the adjudicator's original assessment, he noted Miss B had said that when her partner had previously used her bank account to make payments to his gambling account, he used his own funds. The adjudicator also understood it wasn't unusual for her partner to use her card for household and general spending, although I'll discuss this point much more later.

He understood the bank was told in March 2012, when this matter was first reported to it, that the partner knew Miss B's Personal Identification Number (PIN) and she was aware that he knew it. But, on this occasion, the adjudicator understood that Miss B's partner had mistakenly used Miss B's debit card instead of his own, which was of similar appearance.

Miss B was concerned about the role of the bank here but the adjudicator didn't consider the bank shouldn't have made the payments. He didn't think the bank should have blocked the account either, on the basis that the transactions looked unusual. Nor did he think it could be fairly said that the bank ought to have been aware that deposits were being made to a gambling account which was not in Miss B's name, stopping the payments if it had.

The adjudicator said that banks do have various fraud prevention programmes in place to try to protect its customers. But the payments were processed by the bank, based on the card and account information provided, as it was entitled to do. And the bank was not required to reconcile why a payment was being made from Miss B's bank account, to someone else's gambling account.

In any event, the adjudicator wasn't persuaded that the transactions were made as a result of someone who had mistakenly used Miss B's card. The total value of the transactions was, within a few pounds, the sum Miss B had placed on her account; and the transactions finished before the whole of her account balance had been spent.

So the adjudicator considered why Miss B's partner might have used her card. Both of them would have known that although the gambling account was in his name, Miss B's card could be registered on the account as this happened four times in the autumn of 2011. Miss B had

said the funds for those came from joint savings accounts and one was a £14,000 loan (in the partner's name) which was paid directly into Miss B's account; this seemed unusual.

And the adjudicator believed Miss B had said that her partner wouldn't have had this sum on his own account

So, it seemed to the adjudicator most likely that Miss B's partner was aware he was using the specific funds on Miss B's account. And, even if Miss B didn't authorise the use of her card on this occasion, if she had allowed her partner to use her account previously, similarly, she was aware of his gambling tendencies and had allowed him ongoing access to her account, he didn't think it fair and reasonable for the bank to need to refund Miss B.

Miss B didn't agree with the adjudicator's assessment. She said that her partner didn't have the access to her card that he suggested and certainly didn't know her PIN. She said that her partner hadn't used the card previously.

She said that her partner did have large sums in his account. And, in respect of previous payments to the gambling account, she said that the funds were those of her partner but she made the payments – although the funds concerned here were hers. She accepted the bank wasn't incorrect in processing the payments but she maintains that she didn't authorise the payments to be made and she'd never acted with neglect in regards to her card or account.

Finally, Miss B explained that if she has been unclear or misunderstood, she has a medical condition and she finds it hard to understand and put things into words. For instance, the adjudicator had asked Miss B:

"...what do you mean when you say '*I accept my partner had access to the card....?*' had you allowed him to use it in the past and if so what for?"

Miss B replied:

"...yes we used both of each other's cards for shopping petrol etc..."

Miss B now explains that

"...I was meaning by this that, yes, he did have access because it would of been around the home in my purse, but we used each other's card meaning we both had separate debit cards and used each of our own cards for shopping, petrol etc making a point to you he had no reason to use mine at any time..."

"...when I say access I mean literally being able to gain access to the card around the family home at the time this is what was meant and explained to the branch".

The adjudicator considered the complaint further. He explained how he didn't think Miss B's clarification of matters was borne out by the facts. I need not go into more detail on that here though as I address that matter in the next section of this decision document.

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, I'm very sorry to tell Miss B that I've come to the same findings and conclusions as the adjudicator. I recognise that this matter is of great importance and sensitivity to Miss B. And she'll be greatly disappointed to read my decision. But I can't fairly and reasonably ask Barclays to refund the value of the disputed transactions to Miss B. And I come to that decision based, primarily, on two issues.

Before I set out my findings about those issues, though, I should say also that I acknowledge what Miss B says about her difficulties with written communications. And I have carefully read and considered all that she has said in seeking to clarify what she's written about the matter and what she meant - and the comments submitted by Miss B's father.

I would also say that I don't doubt what Miss B says about the funds being hers and her partner using them for gambling transactions which she didn't authorise him to make. Indeed Miss B has recently submitted a statement from her former partner to confirm this. He now says himself that he used the card by mistake and has never had authority to use the card.

I also note what Miss B now says, and is clarified by her father, about how the transactions came about - and how Miss B should be entitled to a refund of the disputed transactions, on the basis that she never authorised the transactions or was grossly negligent with the security of her card and account. But I have to decide this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

And to do that, I have to consider more than whether Miss B acted in a way, or allowed her partner to act in a particular way – in relation to the specific transactions in dispute – that would amount to her giving authority to her partner to make those specific transactions.

I accept that Miss B now clearly states that she never gave authority for her partner to use the card and he never did. But, on balance, it is difficult for me to accept that Miss B was mistaken in making the original straightforward statement.

Miss B made a straight forward statement that she and her partner both used each other's cards. It also seems unlikely to me, in making the original statement that she meant to say the quite different statement that she now says she meant.

I come to that conclusion also taking into account that Miss B sent information to Barclays by way of an online contact form and said:

"...I complained in the Margate branch over two years ago about transactions that were allowed to come out of my current account in February 2012, but got told because my partner had permission to use the card there is nothing I could do..."

The second point which I consider to be pivotal, is that Miss B says that it was by mistake that her partner took the card from a kitchen drawer and used it. I agree with the adjudicator that it would follow – if that was the case - that when he made the 15 transactions, he must have thought he was spending funds from his own current account.

Yet the spending is £40,300, a figure within a few pounds of the investment funds Miss B had placed on her account. It therefore seems most likely that Miss B's partner knew exactly how much he was spending. And it is questionable as to why - when the mistake came to light – Miss B's partner didn't simply transfer funds from his account to Miss B's account, if this was a matter of simple mistake and he had the equivalent value funds elsewhere.

Miss B is adamant that she didn't authorise the transactions. But, even if that is so, i.e. she didn't physically make the transactions or explicitly agree with her partner that he could, I must still take into account how he would have been able to make the payments and what is known about the circumstances prevailing at the time they were made.

And it seems to me, more likely than not, that he was able to make the transactions as a result of access that Miss B allowed her partner to have to the account.

As I've said, I appreciate that Miss B will be most disappointed with my decision, recognising the great importance to her of the outcome of this complaint.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 29 February 2016.

Ray Neighbour
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