

complaint

Mr C complains that Barclays Bank PLC will not refund payments that he made to gambling sites while affected by a compulsive disorder.

background

Mr C was prescribed medication which is known to have the potential to cause compulsive disorders. He says that (under the effect of the medication) he made a large number of transactions to gambling websites which added up to a substantial amount of money. That included a high number of transactions made during a week in which he was abroad on holiday.

As Mr C had not previously made transactions of this type, and given that a significant number of the transactions were made while he was abroad, he considers that Barclays should have taken action to protect him by stopping the account and contacting him to make sure the transactions were not fraudulent.

Mr C also considers that Barclays should have realised that the extent of the transactions indicated that he was not in control of his actions, and should have taken steps to protect him. Mr C says that Barclays should have been aware of his medical condition, as he had made a claim on his Barclays insurance in respect of it.

The transactions stopped after Mr C's wife noticed them on the account and Mr C told her what he had done. Mrs C later contacted Barclays to ask for the money to be refunded. Barclays did not accept that it should be held liable for the transactions, but paid Mr C £100 for delay in providing him with its final response on his complaint. As the complaint remained unresolved, Mr C brought it to this service where it was investigated by an adjudicator.

The adjudicator had considerable sympathy for Mr C but, from the evidence, did not consider that Barclays could fairly be held liable for his gambling losses. Barclays offered to pay an additional £100 in respect of delay in its complaint handling, which the adjudicator felt was fair.

Mr C did not agree with the adjudicator's conclusions and Mrs C wrote on his behalf saying, in summary:

- What happened to Mr C was a rare side-effect of the medication, but was still a known side-effect. Barclays had a duty of care to Mr C to protect his finances.
- She had, in fact, gone to a branch of Barclays to specifically tell them about the medical condition and show them the leaflet for the medication, which clearly listed the possible side effects including of compulsive gambling. They took a copy of this and said it would be put on file in case anything was to happen.
- Barclays should have suggested that she set up text alerts if amounts over a particular limit left the account – which is something she has now done.
- Mr C received a substantial payment when he became permanently unable to work, and she left it to him to keep an eye on their finances. She expected that Barclays would be in contact if anything alarming happened.

- She did not have online access to the account while they were abroad, as she had forgotten her pass number and did not have the card device. She only realised what had happened when Mr C later admitted what he had done. Mr C has also taken money from her sole account with another financial institution, as a result of the medication.
- Mr C was not of sound mind when he made the transactions, and would not have been aware of his actions. His doctor has confirmed this. Barclays should not have allowed these transactions to be made, and should be held accountable.

As Mr and Mrs C had not previously mentioned taking the medication leaflet into the branch to specifically point out potential side-effects, we asked Barclays to respond on that point. Barclays says there is no note on the current account records about Mr C's condition, and it does not accept that Mrs C made the branch aware of the potential side-effects of the medication he was taking.

my findings

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

The fraud prevention measures that Mr C feels Barclays should have taken in his case would not, in my opinion, have prevented the transactions taking place. These were not fraudulent transactions – Mr C made them himself, even if under the effects of medication at the time.

The transactions were made over a period of months and did not, apparently, come to light until later. Mrs C says she was unaware of the transactions at the time, since she had left Mr C to look after their finances and he had been secretive during the period the transactions were made. It seems she was not shown the periodic joint account statements that were sent out by Halifax.

I have very carefully considered Mrs C's more recent explanation that she had clearly warned Barclays, some three years before the problem began, of the medication Mr C was taking and its specific potential side effect of compulsive gambling.

But there is no indication of this being entered in the contemporaneous notes on the account, nor do Barclays and Mr and Mrs C seem to have taken any steps at that time to agree restrictions on the account or put in place any other formal monitoring arrangements. Given the very clear warning Mrs C says she gave Barclays, I consider it likely that such a specific warning would have resulted in some action of this type being taken at the time.

I fully accept that Mr and Mrs C have brought this complaint in good faith, but I am not satisfied that Mrs C's recollection of her warning to Barclays is as accurate as she believes. It may be that Mrs C has, with the passage of time and the upsetting intervening events, confused conversations where she told Barclays insurance company about Mr C's medical condition (which did not, itself, cause the compulsion) with telling Barclays bank about the dangers of the potential side-effects of the medication he was taking for that medical condition. I also note that the current account had travel insurance attached to it, which Mrs C says she was keen to make sure still covered them after Mr C's diagnosis, and it may be that her recollection of a branch visit related to that.

In all the circumstances, however, I am not persuaded that Mrs C pre-warned Barclays of the potential danger to the current account that Mr C may develop a compulsion to gamble.

I appreciate that Mr and Mrs C have tried, with only limited success, to get refunds from the gambling sites Mr C used. This has been a very difficult time, and I have great sympathy for them. But I am only able to find in Mr C's favour if I am persuaded, by the evidence, that Barclays is responsible for Mr C's losses. For the reasons I have explained, I do not consider that I can fairly find Barclays liable.

I note that Barclays has offered to pay a further £100 in relation to delay in handling the complaint, and I leave it to Mr C to decide whether or not he wishes to take up that offer.

my final decision

Given my findings, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 6 January 2015.

Jane Hingston
ombudsman