

complaint

Ms B has complained Barclays Bank UK PLC won't refund her for gambling transactions on her current account which she didn't make.

background

In November 2017 Ms B complained to Barclays that there were a large number of gambling transactions on her account she didn't make. These amounted to £1,790. Barclays initially credited Ms B's account with this money. After consulting with the gambling company, who I'll call M, Barclays felt the evidence pointed to Ms B having made these herself. They re-debited her account.

Ms B complained but Barclays wouldn't change their mind. Six months later Ms B brought her complaint to the ombudsman service. Shortly after this Barclays closed this one of Ms B's accounts and expected her to pay what was owed. By this time there was a substantial overdraft of nearly £4,000.

By the time we were able to get Barclays' file on Ms B's complaint, it was clear this covered gambling transactions from 1 March to 23 October 2017.

Ms B believed one of her carers, who spent considerable time with her including staying overnight, had carried out this fraud using both of Ms B's Barclays' debit cards.

Barclays evidence included what they'd obtained from M showing they'd had an account in Ms B's name since 24 July 2015. Numerous transfers had been made into Ms B's Barclays' account to always ensure there was enough money in there to facilitate the gambling transactions. M had also credited winnings to Ms B's account.

Overall our investigator didn't think there was enough evidence to show Ms B hadn't carried out these transactions herself.

Ms B disagreed and asked an ombudsman to consider her complaint. She was also concerned that Barclays' file didn't include the crime reference she knew she'd given them. She'd already told us that her carer had subsequently been prosecuted but she wasn't able to tell us any further details, including her carer's name. Ms B also made us aware she considered further transactions – pre-dating 1 March 2017 – were also not made by her.

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've reached the same conclusion as our investigator, and for roughly similar reasons. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the 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.

The Payment Services Regulations (PSRs) are the relevant law here. These primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing that's had an impact on the decision I'm making here. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what Barclays and Ms B have told us. I've also been able to see what M told Barclays to help them make their decision in December 2017.

I can see the timeline of events, each party's testimony and how the transactions were made were covered in our investigator's views of 6 August 2020. I don't intend to repeat everything that was said there. I will, of course, refer to those aspects which form the basis of my decision.

The issues I have considered include:

- An account was opened with M in July 2015 in Ms B's name. This was done with her correct personal details, including her date of birth and address. The email and mobile phone number used first off don't match those Ms B used when she brought her complaint to us.
- The email address used, however, is only one digit different to the one we use to communicate with Ms B.
- There's nothing definitive from these details that show the account was set up by someone else or by Ms B. Although I do wonder why someone who isn't Ms B would deliberately set up an email address to use for gambling which is so similar to Ms B's.
- Ms B told us when she tried to contact M in November 2017 they wouldn't speak to her as she didn't pass security. M's own records – as shared with us by Barclays – show Ms B (or someone pretending to be her) contacted them on 7 November 2017 and successfully amended the phone number and email details. The amended phone number is the one on our contact details for Ms B so I think I'm safe to assume this was Ms B contacting M.
- By reviewing Ms B's statements I can see there are transactions with M from 2016 at least. These weren't part of Ms B's original complaint to us or Barclays, although she now disputes these as well. I wonder why she didn't dispute these earlier.
- The value of the disputed transactions from March to October 2017 amount to £6,236.
- Ms B has told us she didn't see the balance when she was checking her Barclays account online or by mobile. She was just making a transaction. I'd still have thought she'd have noticed both the large number of withdrawals earlier as well as the credits from M. I can see from her online and mobile banking records that Ms B was in the habit of logging on very regularly.
- She also receives regular payments from the Department of Work and Pensions and I don't get the feeling she has lots of spare cash. So I'd not be at all surprised if she kept a close eye on her finances.
- Transfers are made regularly from one of Ms B's other bank accounts into her Barclays' account. It is these transfers which top up the account and allow the

payments to be made to M. I have no evidence Ms B has disputed these transfers with her other bank if she was saying she'd not made these at all.

- Ms B has serious health issues which is why she requires constant care and support to do shopping and other normal activities.
- Ms B disputes Barclays' view that gamblers don't use other people's accounts to commit fraud. It's certainly less likely but I do agree that if someone is gambling compulsively using someone else's account, then it's not the credits that matter but the gambling.

If I was to believe Ms B hadn't made these transactions herself, I'd be accepting that her carer had run the risk of using Ms B's own iPad at a number of different times of the day when at any time Ms B could have interrupted her. That person also ran the risk of Ms B never noticing what was happening with her accounts much earlier.

I'd also be accepting that Ms B's couldn't recall any personal details of her carer. Whilst I know Ms B's illness massively impacts her memory, I'd have expected her to have made all the steps she could to provide us with the details we need to verify her story. So for example she's told us her son handled all the criminal aspects of her carer's prosecution but has not asked her son to provide us with the details we've requested.

Overall I believe it's most likely Ms B carried out the transactions herself. I won't be asking Barclays to do anything further.

my final decision

For the reasons I've given, my final decision is not to uphold Ms B's complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 9 January 2021.

Sandra Quinn
ombudsman