

The complaint

Mrs K has complained that Barclays Bank UK PLC is holding her liable for transactions she says she didn't make or otherwise authorise.

What happened

On 12 April 2019, Mrs K used her credit card and PIN for two purchases. Around 40 minutes later, her card and PIN were used at an ATM to withdraw the maximum amount. Mrs K says this was not her.

That withdrawal was the start of a series of disputed transactions made in the UK from 12 April to 16 April 2019, totalling £1,626.82. However, Mrs K and her family were abroad on holiday from 13 April 2019 onwards.

On 16 April 2019, Mrs K realised she didn't have her card with her, and reported it to Barclays as lost. When she later found out about the transactions made back in the UK, she disputed them.

The person who had the card continued to try to use it in the days after Mrs K cancelled it, but the card had been blocked.

Mrs K explained she usually kept her card either in a purse or loose in her pocket, and it was loose in her pocket the last day she used it. She didn't allow anyone else to use her card. She didn't keep a record of her PIN and hadn't told it to anyone. She had *not* deliberately left her card in the UK, but as her holiday was all-inclusive she hadn't noticed it was missing until she wanted to buy something a few days in. Barclays asked her for statements from her other bank accounts, but she didn't want to give them to Barclays at first. She eventually did.

Barclays held Mrs K liable for the payments in dispute. They couldn't see how someone could've learned Mrs K's PIN without her consent. They thought Mrs K had said that she *had* deliberately left her card in the UK, in which case they couldn't see how she'd known it was missing. They felt her reluctance to provide her private financial information was suspicious. And they noted that the disputed spending was done in her local area. Barclays closed the account with just one days' notice.

Our investigator looked into things independently and didn't uphold the complaint, for broadly the same reasons. She also felt Mrs K should've noticed earlier that her card was missing. She thought Mrs K had provided contradictory information about where she kept her card and whether she intended to leave it in the UK or not.

I sent Mrs K and Barclays a provisional decision on 28 June 2020, to explain why I thought the complaint should be upheld. In that decision, I said:

Barclays' technical evidence shows that the payments in dispute used Mrs K's genuine card, and either the correct PIN or contactless technology. But this is not enough, on its own, for Barclays to hold Mrs K liable – it also needs to be able to evidence that Mrs K consented to the transactions.

There is a clear point of compromise for Mrs K's card and PIN. She used her card and PIN to make a payment in a public location. Then around 40 minutes later, the disputed transactions started at a cash machine at around a 40 minute walk from her last location. It seems very plausible that someone was able to overlook her entering her PIN at her last payment, and then steal her card when it was loose in her pocket.

I've listened to Mrs K's calls and read the relevant correspondence. I appreciate there's been some confusion at times, particularly when the lines have been bad or when Mrs K has struggled to remember things months later. But actually, I think her testimony has been consistent and credible overall.

Mrs K has repeatedly said that she usually kept her card either in a purse, or loose in her pocket, and that on 12 April 2019, it was loose in her pocket. I don't think that's contradictory.

Similarly, having listened to the calls, Mrs K said she had not deliberately left her card in the UK. She initially thought she must have left it behind by accident as she'd just realised she didn't have it with her while abroad. I appreciate the staff member may have misheard.

I don't think it's unreasonable that Mrs K didn't notice her card was missing for three days. She's explained that her holiday was all-inclusive and she had other accounts elsewhere. Indeed, I can see from her statements that she sometimes went entire months without spending on this credit card. She would've had no particular reason to be checking her online banking while on holiday, and she explained she didn't want to run up roaming data charges to do so. She then only noticed her card was missing when she wanted to buy something with it. That all seems reasonable in these circumstances.

I can see from Mrs K's online banking history that she did not check her account until after she'd reported her card was missing. So I don't think she had any good reason to realise that something was wrong at an earlier point. And she appeared to be genuinely unaware of the disputed activity when she spoke to Barclays.

The disputed transactions started with the card user withdrawing the maximum possible amount of cash shortly after Mrs K's last genuine payment. They did this again early the next morning, and the next. And they attempted an excessive number of declined transactions at different locations and for different amounts in order to get as much money from the card as possible. Once that stopped working, they branched out into smaller retail payments, again trying various amounts, spending hours at a time trying to get more out of the card. This seems consistent with someone trying to defraud Mrs K.

Further, the person using the card continued trying to use it for up three days after Mrs K cancelled it. So they don't appear to have known Mrs K cancelled it – and again, seem to have been trying to get as much out of the account as reasonably possible.

Barclays pointed out that the disputed spend was made in Mrs K's local area. But that's unsurprising, given that Mrs K's card was stolen in her local area. I'm unclear what other area Barclays expected the transactions to be in. And the fact that Mrs K and her family were in a different country at the time should have alerted Barclays to the fact that she may have been genuinely defrauded. Mrs K has provided flight and accommodation records to show she was not in the UK while the disputed transactions were going on.

Barclays also found it suspicious that Mrs K didn't want to speak to them about her other accounts. I don't find it particularly notable for someone to be uncomfortable giving out their private financial information to relative strangers, not least when they've just been defrauded. I acknowledge that Mrs K didn't help her own case along here, but I don't think this bears any significant relation to whether she consented to the transactions in dispute or not. And from what I've seen of her other accounts, they don't appear to be relevant.

Lastly, I've not seen any other evidence which shows that Mrs K consented to these transactions, nor any which makes it seem implausible that they could've been made without her permission.

In summary, given the clear point of compromise, the fraudulent pattern of spending, the likely and plausible way that these transactions could've been made without Mrs K's consent, her credible testimony, and her appearing to be genuinely unaware of something being wrong beforehand, I currently think it's most likely that Mrs K did not consent to these payments. And so I don't currently think Barclays can hold her liable for them.

The CIFAS marker and Barclays' other actions

In order to register a CIFAS marker, there's a high standard of evidence needed. A business cannot simply add such a marker based on an unfounded suspicion. Barclays needed to have rigorous evidence against Mrs K.

It follows that since I think it's most likely that Mrs K did not consent to these transactions, I also currently think that Barclays acted unreasonably in adding the CIFAS marker. Indeed, even if I had agreed with Barclays' arguments about the transactions, I still don't think it had sufficient evidence to register a marker in this particular case.

I understand that following Barclays adding this marker, other financial businesses closed Mrs K's accounts, and she's been unable to open new ones. I understand this has caused her very substantial trouble and upset.

I also do not think Barclays treated Mrs K positively or sympathetically when they registered a default against her while the dispute was still being investigated at our service. I understand this has caused her further stress, has damaged her credit rating, and has only added to her difficulty in keeping or replacing her accounts.

Lastly, it follows that since I think Barclays was wrong about the fraud, I also think it acted unfairly by closing Mrs K's account without the proper notice.

I understand that all of this has caused a considerable amount of distress to Mrs K over the course of over a year.

Both parties accepted my provisional decision.

What I've decided – and why

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

Both sides have agreed to the provisional decision. So having reconsidered the case, I've come to the same conclusion as before.

I've set out the redress again below. Barclays sent me its proposed calculations, which I'm grateful for and looked mostly correct. Though it should keep in mind that I've also awarded the normal 8% simple interest on Mrs K's repayments towards the disputed debt. And its letter should make it clear that the CIFAS marker and negative credit file information were added in error, in case Mrs K needs this to resolve things with her other affected creditors.

Putting things right

Barclays Bank UK PLC needs to do the following:

- Restructure the credit card account to put it in the financial position it would be in if the disputed transactions had never gone out. This includes removing any related interest and charges and refunding any payments Mrs K made towards the disputed debt;
- Pay simple interest to Mrs K on her repayments towards the disputed debt, at the rate of 8% simple a year, payable from the date they were last debited until the date they're returned[†]. This is to compensate Mrs K for the time she didn't have her money;
- Remove any negative information from Mrs K's credit reference file that Barclays had added in relation to this disputed debt;
- Remove the CIFAS marker it loaded against Mrs K in relation to this matter;
- Provide Mrs K with a letter confirming that the negative credit file information and the CIFAS marker were added due to Barclays' error. This is to help her resolve things with other financial institutions who may have closed her accounts due to Barclays' actions;

- Pay Mrs K a further £1,000 as compensation for the substantial trouble and upset it has caused her.

† HM Revenue & Customs requires Barclays to take off tax from this simple interest. Barclays must give Mrs K a certificate showing how much tax it's taken off if she asks for one.

Barclays should get in touch with Mrs K directly to arrange the settlement.

My final decision

For the reasons I've explained, I uphold Mrs K's complaint and direct Barclays Bank UK PLC to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 10 August 2020.

Adam Charles
Ombudsman