

The complaint

Mr M complains that Barclays Bank UK Plc (Barclays) won't refund disputed transactions made using his debit card, which he says he didn't make or otherwise authorise. He is also unhappy Barclays have refused to raise chargebacks.

What happened

Mr M says that fraudulent disputed transactions totalling £13,663.85 were made from his Barclays account in September 2019. All the transactions were made without the presence of a physical card; they were online payments.

Mr M says he did not make or otherwise authorise anyone to make the transactions. He says he never received any of the goods and is the victim of fraud. He asked Barclays to refund them; to find out and explain how this has been allowed to happen.

Barclays investigated and decided not to refund Mr M's disputed transactions. It thought there wasn't a plausible point of compromise for Mr M's debit card details. And the transactions were made from an IP address which matched previous genuine payments and regular logins, it considered either Mr M made or authorised the disputed transactions. As part of its investigation Barclays also contacted some of the merchants – who provided it with records showing the purchases had a delivery address which corresponded to Mr M's residential address. The merchants confirmed goods were delivered to this address and in some cases were signed for.

Mr M said if after its investigation Barclays were of the opinion that he had consented to the transactions and were holding him liable. He would like it to provide evidence that all goods purchased were delivered to him and signed for by him. If this wasn't the case, he should be eligible for a refund or the merchants should arrange to deliver the goods to him. He believes under normal circumstances if a merchant failed to deliver goods ordered he would be entitled to make chargeback claims. He asked Barclays to raise these claims – but it refused to do so.

Mr M was not happy with Barclays' response so brought his complaint to our service. Our investigator didn't recommend that the transactions should be refunded to Mr M. In summary he felt unable to conclude that the transactions had been made fraudulently, and thought most likely they'd been authorised by Mr M.

Mr M didn't agree with our investigator's outcome and asked for his case to be reviewed by an ombudsman. So his complaint has been passed to me for a decision.

Having looked at everything I could see there were some aspects of Mr M's complaint which our investigator had not commented on. In these circumstances I felt it would be helpful for me to speak to Mr M to get a better understanding of his concerns, gather some further information and explain this services role. Having spoken to him it became clear to me Mr M has very strong feelings about his complaint. He maintains he has not made nor authorised anyone else to carry out the disputed transactions.

I issued my provisional decision on 13 August 2020. In it, I explained why I didn't intend to uphold Mr M's complaint. An extract of that decision is set out below:

"What I've provisionally 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. Having done so, I'm afraid I intend not to ask Barclays to refund the disputed transactions.

I know this will be very disappointing for Mr M but as far as I can see Mr M's case is largely based on his testimony. I'd like to assure Mr M that by not upholding his complaint I'm not calling into question his honesty. My role is to look at all the evidence I have, and reach what I think is an independent, fair and reasonable decision – which I believe I have.

I hope Mr M can understand in situations like these, where I wasn't present at the time the disputed transactions took place or when the preceding and ensuing events occurred – I can't know for certain what has happened. So, where evidence is incomplete, inconclusive or contradictory, I need to decide a complaint on what I think is more likely than not to have happened in light of all the available evidence and the wider surrounding circumstances. I'm afraid it would not be reasonable, nor fair of me to uphold this complaint based solely on Mr M's testimony.

I appreciate Mr M is adamant he did not authorise the disputed transactions and believes a criminal activity has taken place. He would like an explanation of what has happened and would like this service to investigate. But as I've explained to Mr M in many situations such as this one, the Financial Ombudsman Service will often not be best placed to determine such a question. It is not this service's remit to forensically investigate the alleged fraud nor does it have the power to carry out a criminal investigation – those are matters for the police and possibly better dealt with by a court. We are an informal dispute resolution service and it is for both parties to provide the evidence they'd like us to consider. My role is to be impartial and decide what I believe is fair and reasonable in the circumstances.

With that being said, I would like to assure Mr M I've read and considered the whole file, but as the purpose of my decision is to set out my conclusions and reasons for reaching them, my findings focus on what I consider to be the central issues. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is the right outcome. I hope Mr M does not take this as a courtesy; our rules allow me to do this. This simply reflects the informal nature of our service.

The investigator wrote a detailed view that set out the transactions, relevant regulations and evidence. Both Mr M and Barclays have read the investigator's view, so I won't repeat every detail here. I will, however, refer to those crucial aspects which impact the decision I'm making and any additional considerations which have not been covered.

The regulation that is relevant when considering Mr M's complaint in relation to the disputed transactions is the Payment Services Regulations 2017 (PSRs 2017). In short, Barclays is generally required to refund any unauthorised transactions. Mr M says he didn't make the disputed transactions, and they are unauthorised. So, my primary concern now is to come to a view about whether or not I think Mr M authorised the transactions and whether Barclays conclusion that he did was reasonable. If I'm satisfied that Mr M did, then I wouldn't ask Barclays to refund him.

Firstly, having reviewed Barclays' technical evidence I'm satisfied, that Mr M's genuine card details - the 16-digit number on the front of the card, the expiry date, the 3-digit security code on the back of the card and billing address were used to make and authenticate the disputed transactions. I accept that is not, on its own, enough to permit Barclays to hold Mr M liable for the disputed transactions.

However, Barclays can hold Mr M liable for the disputed transactions if the evidence suggests that it's more likely than not that he made or authorised them himself. I've carefully thought about whether Mr M consented to the transactions being made and to help me decide what happened, I've looked at the evidence of the transactions, as well as what both Mr M and Barclays have told us.

As all the disputed transactions were made online and did not require the physical card to be present, I agree with Mr M that I can't rule out the possibility that someone was able to do that without his knowledge. However, weighing everything up, on balance, I'm not persuaded that an unknown fraudster obtained Mr M's card details, hacked his Internet service and managed to successfully intercept (on several occasions) items delivered to his home address without detection. I think it's much more likely the payments were made by Mr M or by someone with his permission. I say this for the following reasons;

- *Mr M has explained how he keeps his card safe and that no one else has access to it. He lives alone and when he reported the fraud to Barclays, the card was still in his possession. He was certain it wasn't possible for someone to have taken it and replaced it.*
- *The disputed payments were all made online – so the physical card was not required. I can see Mr M has made payments using his card before. So of course, it's possible that someone could've taken a copy of his details. But I think this scenario of compromise is unlikely as it doesn't explain how an unknown fraudster who had simply got hold of Mr M's card details would have known, or would have been able to guess, his address – as whoever made the transactions also entered Mr M's address for authentication and delivery.*
- *Similarly, the transactions were made from an IP address that Mr M used regularly for genuine transactions and to access his mobile banking. Whilst I've thought about what Mr M has said that it's not impossible for these to be 'hacked', and he has said that he has been a victim of this before. I'm afraid I've seen no evidence that suggests his Internet, phone or details were 'hacked' in some way and I'm not persuaded this is what has happened here.*

- *I've looked at Mr M's Barclays account statements in the months prior to the disputed transactions and can see it was not used as a regular account. He has told me he has another account which, is his main account, that he uses regularly. He very rarely had an account balance of more than a couple hundred pounds in his Barclays account. And any large amounts crediting the account in the past were transferred out or spent within a few weeks. It seems plausible, given the past account history that the large credits were made in order to fund the disputed transactions. When I asked Mr M about the incoming credits, he didn't feel he needed to provide an explanation of where they came from and couldn't see why this was relevant. But when questioned further all that he disclosed was that they were from a friend for a deposit.*
- *The large credits into the account were made just before, or during, the period of the disputed transactions. The technical data also shows no online banking logins were attempted during the period the disputed transactions took place. The first transaction attempted was for a large amount totalling over £5,000, this indicates to me that whoever was using the card details knew there was a substantial amount of money available in the account. I think it's unlikely an unknown fraudster using the card details without Mr M's consent would've known this information – especially given that Mr M usually maintained a very low balance and didn't often use the account. So, it raises the question of how some unknown third-party would've known not only Mr M's card details, residential address, but also this level of detail about the incoming payments and balance of the account before making purchases over a period of roughly a month.*
- *I'd also typically expect a fraudster to try to maximise their opportunity as fast as possible. Therefore, I would usually expect numerous attempts in quick succession in order to empty the account before the account holder is alerted and reports the fraud. But that wasn't the pattern here. The disputed transactions take place at various intervals over the course of the month from 3 September 2019 until the matter was reported on 27 September 2019. This pattern indicates that whoever made these transactions wasn't likely to be an unknown fraudster as it would be unusual for a fraudster to act in that way.*
- *Mr M says he couldn't obtain any information from the merchants as he couldn't be verified. He says the details used were not his, so he was unable to answer their security questions. I can see from the evidence available to me that the merchants appear to have Mr M's correct name and residential address. They do however, have a different email address and telephone number to those provided to us by Mr M or those which were held by Barclays. I understand why Mr M feels this is evidence to support it was not him and that he didn't receive the goods but the issue I need to decide isn't who physically ordered or received the goods, but rather were these transactions authorised by Mr M. I've thought about this carefully and weighing everything up I'm not persuaded this is enough reason for me to conclude that Mr M didn't make or otherwise consent to somebody else making the transactions. Firstly I can't ignore the fact that the goods were delivered to Mr M's residential address; secondly I don't think it's uncommon for individuals to have multiple email addresses; thirdly Mr M has confirmed that he does have another email and mobile – so this is not something unusual for him; fourthly I've seen no evidence to support the email address or telephone number belonged to someone else and even if I were what it still wouldn't prove is whether this was done without Mr M's knowledge and permission.*

- *Mr M says he returned one of the deliveries as he inadvertently happened to be home when it arrived. But given that it would've been addressed to him I find it unusual that Mr M didn't check his accounts or make further enquires at this time especially as he has mentioned he'd been a victim of fraud before.*
- *I can also see from Mr M's statements there are multiple refunds, not one – including a refund for £599 many weeks after the purchase and reporting of the disputed transactions. Whilst I accept there might be a perfectly credible explanation for this, it's worth noting if that isn't the case, I find it unusual that a fraudster returned items. This is not what I'd expect to see as a fraudster would not have benefited from this, as the refund was returned to the account from which it was paid - Mr M's account.*
- *From what I've seen the disputed transactions were largely for building materials; electronics; large and small household items. These items were delivered to Mr M's residential address across numerous days. Aside from there not being a plausible explanation as to how a fraudster would've got hold of Mr M's address it seems highly unlikely to me that a fraudster would wait at Mr M's property putting themselves at significant risk of detection by him or anyone else who lives in his block of flats – especially as there were multiple orders delivered over the course of the month. And some large household appliances would've been hard not to have noticed being delivered, such as a washer/dryer, built in double oven, cooker hoods and hobs. It's also questionable why a fraudster would choose to use the address of the person they were trying to defraud, when they could more easily have used another address to intercept the goods. So I think it's more likely than not that the deliveries were received by Mr M or by someone with his consent. I've thought about what Mr M has said about him having noticed a suspicious looking van being parked outside his flats. But I don't think this is enough to persuade me that the deliveries weren't received by Mr M or without his knowledge.*

I appreciate any of these things in isolation are not conclusive of anything. But they are not irrelevant either and, taking account of them altogether I do not think that the transactions were made by an unknown fraudster or by someone acting without Mr M's knowledge or consent. I say this because I haven't been persuaded of a plausible explanation for how an unknown third-party could've obtained Mr M's card details, been able to find out his address, based on his card details, known when he wouldn't be home to receive the deliveries, potentially accessing his property or managing to successfully intercept each delivery except for one which Mr M says he returned, without being detected and been able to access his Internet to place the orders, without him sharing this information. So, I think on balance either Mr M made the transactions himself or someone made them with his authority. And because I think this it is fair for Barclays to hold him liable for the transactions.

Chargeback

I understand that Mr M is particularly unhappy Barclays refused to raise chargebacks, which he believes he is entitled to, for the disputed transactions. He considers Barclays refusal to help him seek recovery unfair.

I know Mr M thinks as Barclays is of the opinion, he authorised the transactions, and he has no option but to accept this - as he still dissents receipt of any goods Barclays should've raised chargebacks for goods and services not received.

Whilst I agree a chargeback is a means of recovering funds in dispute, it isn't a consumer right; it's a voluntary scheme; something provided for by the relevant card scheme rules and there is no obligation for a card issuer to raise a chargeback when a consumer asks for one. I of course consider it good practice for a chargeback to be attempted where the rights exist and there is some prospect of success. However, in the circumstances of Mr M's case I can't find that Barclays decision to not raise a chargeback was unfair or unreasonable. I say this for the following reasons:

- *Mr M reported the matter as fraud and said he had not made or authorised the purchases. Barclays followed the correct procedure treating the transactions as unauthorised and investigating the matter.*
- *A prerequisite for contractual disputes is cardholder engagement (i.e. not fraud). Because of the nature of Mr M's dispute – that he did not make or otherwise consent to any purchases - there were no suitable dispute chargeback reason codes for Barclays to have pursued in order to resolve his claim.*
- *I've even thought about if Mr M had changed his claim to say that he did make or authorise someone to make the transactions he would've needed to have provided Barclays with certain evidence; that he did purchase the goods or service and had tried to resolve the matter with the merchant. Mr M hasn't provided any evidence that would support a chargeback claim to be made and even if he did now have this information, chargeback claims are time sensitive and most claims would need to be made within 120 days from the date of the transaction – which has now passed.*
- *But even still, a chargeback isn't guaranteed to result in a refund – the merchant can defend it if it can show it's provided goods or services and, in this case, enquiries made by both Mr M and Barclays to some of the merchants confirmed that the delivery address was Mr M's genuine residential address and the items were delivered.*
- *And since Barclays already knew the same IP address regularly used by Mr M was used to place the orders and merchants has responded to enquiries made providing confirmation that goods were delivered to Mr M's genuine home address and signed for. I don't think based on the information available to Barclays, it was an unreasonable conclusion for it to reach that the merchants would respond to defend a chargeback request – so there was likely no real prospect of success.*

As Mr M's position has always been that the transactions were unauthorised, considering all the above I don't think it was unreasonable for the Barclays to refuse to raise chargebacks."

Barclays confirmed it had received my provisional decision. It currently had nothing further to add.

Mr M responded to my provisional decision. He disagreed with the outcome, he maintains he has been a victim of a fraud which could've easily been avoided if Barclays was more vigilant. He felt he'd shared his frustrations with me, but these had not been taken into consideration.

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.

I'd like to assure Mr M I carefully thought about and took into consideration, all his comments before reaching my provisional decision.

As neither party had any further submissions or comments on the substance of what I've said in my provisional decision for my consideration, I see no reason deviate from the outcome explained in my provisional decision.

I remain of the view that, on balance, I do not think that the disputed transactions were made by an unknown fraudster or by someone acting without Mr M's knowledge or consent. So it follows that Barclays didn't treat Mr M unfairly when it held him liable for the disputed transactions. Nor do I think it was unreasonable, under the circumstances, for Barclays to decide not to raise chargebacks.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 November 2020.

Sonal Matharu
Ombudsman