

## The complaint

Mr S complains that Barclays Bank UK PLC failed to refund a number of transactions that he didn't authorise.

## What happened

Mr S has said that he was visiting family on an extended trip abroad when he noticed messages from Barclays about the funds available in his account. When he examined his statements, he saw that multiple transactions had been made at Automated Teller Machines (ATM) in the same country he was staying in and one larger payment had been taken from a car hire business I'll refer to as G. The payment to G had taken his account into an unarranged overdraft.

Mr S's card was cancelled by Barclays and when Mr S returned from abroad, he contacted them about his account and explained that he didn't recognise a large number of transactions at the ATM's and the large payment to G. Barclays looked into the issue and Mr S told them he still had the card in his possession and hadn't revealed the Personal Identification Number (PIN) number to anyone. He said he was still abroad when the payment to G was made.

Barclays believed Mr S was responsible for all the transactions because he still had his card in his possession and no-one else knew the PIN number. They confirmed that the payment to G was taken by them because Mr S had an agreement with them related to a previous car hire and was based on an outstanding invoice for damage caused to the vehicle.

Mr S continued to deny all the transactions and told Barclays that he'd already paid G for the damage. Barclays obtained evidence from G and decided that they couldn't challenge the transaction because there was no likelihood of a successful chargeback request.

Mr S complained about the situation but Barclays didn't change their position. Mr S brought his complaint to our service for an independent review and it was looked into by one of our investigators. Barclays sent us their file and within the paperwork was a note that Barclays had previously challenged the attempt by G to take payment for the outstanding invoice.

Our investigator thought that it was reasonable for Barclays to hold Mr S liable for all the transactions. She thought that it was unlikely anyone else was involved with the ATM withdrawals because Mr S still had his card and hadn't told anyone his PIN, although he had written the PIN down and stored it in his phone – but the phone hadn't been taken by anyone. Our investigator thought the evidence supplied by G was sufficient for Barclays to hold Mr S liable for the larger transaction and didn't uphold the complaint.

Mr S disagreed with the outcome and complained that Barclays shouldn't have let the payment to G go ahead because he had no funds in the account and no overdraft. He continued to deny the payments were made by him.

I issued a provisional decision where I said:

*I've considered all the available evidence and arguments to decide what's fair and*

*reasonable in the circumstances of this complaint.*

*There are two aspects to this complaint, the series of ATM withdrawals whilst Mr S was abroad, and the payment taken by G. A second complaint was raised by Mr S relating to a separate issue and I'll only be dealing with the disputed transactions in this decision.*

*The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Barclays can hold Mr S liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.*

*Coming to the question of authorisation, this is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, Barclays have supplied evidence that shows the genuine card and PIN were used to make the ATM transactions and the appropriate card details were entered for the payment to G. I'm satisfied that the evidence shows all the disputed transactions were authenticated.*

*Consent refers to the way in which Barclays and Mr S agreed to use the card for transactions. For example, when using the card and PIN together or the card details, Barclays agree to accept that this is a legitimate payment instruction made by the cardholder or another approved user and make the payment on their behalf. The ATM transactions in this case used the genuine card and the correct PIN and the payment to G used the correct card details, so I'm satisfied that consent was given, and the disputed transactions were authorised. But, there are exceptions where it wouldn't be appropriate for Barclays to hold Mr S responsible, for example if the card or card details were used without his permission.*

*ATM disputed transactions.*

*Mr S has said that he was visiting abroad for about four months and he didn't use his card to withdraw any funds. The statements for his Barclays account show that on several occasions he received money from friends into his account, and these accounted for the majority of the funds used to make the withdrawals. Mr S still had his card with him at the time of the disputed transactions and told us that he hadn't told anyone the PIN number. He said that he was generally with family but did do some travelling. He said that his PIN number was written down in his phone, but other people didn't have access to it.*

*So, when I've examined the circumstances of these withdrawals, they were made with Mr S's genuine card and correct PIN number. The type of card used by Mr S has a chip in it and it's generally accepted by the banking industry and our service that the chip on a modern debit card can't be cloned or copied. What that means here is that I'm satisfied Mr S's genuine card was used to make the withdrawals.*

*I've thought about the possibility of an unknown third party using the card to make the withdrawals and in order to do that, they would have had to take the card, find the PIN number on Mr S's phone and use it without being detected when they put it back in Mr S's belongings. And whilst it's possible this could have happened; I don't think it's the likely explanation. The transactions took place over a period of time and this would entail a third party taking and replacing the card on several occasions without Mr S realising. This seems to be a risky way to use his card and I'd question why someone would take the risk of replacing it when they could just continue to use it.*

*Mr S had received funds into his account once he was abroad and together with a small balance already in the account, the money received funded these withdrawals. Some of these funds were paid into the account when it had a very small balance, which allowed the remaining ATM transactions to be made. The ATM transactions stopped once the account effectively reached a zero balance. So, whoever was using the account, timed the*

*withdrawals to coincide with incoming payments and stopped once it reached zero and didn't make any further withdrawals. This would indicate that the user of the card knew there was money in the account and that top up funds had been received.*

*There were no further attempts to use the card and this, I think, is indicative that the user knew the balance and that it was now empty. When I've taken all the facts into account, especially the retention of the card by Mr S and that he hadn't told anyone the PIN number, coupled with the use of the account when new funds had arrived – I think it was more likely than not that Mr S was responsible for these transactions and it was reasonable for Barclays to hold him liable for them. It follows that I don't intend to uphold this part of the complaint.*

*Transaction to G.*

*Once Mr S's account reached a very small positive balance (less than two pounds), the transaction was made by G and this had the effect of taking the account into an unarranged overdraft. Mr S told Barclays that he'd already settled this invoice directly with G, but Barclays received evidence from G that the invoice remained outstanding. G also sent a copy of the agreement where Mr S had accepted the additional charges.*

*G used a provision within the payment scheme they were part of that allowed them to push the payment through, despite their being no funds in the account. Barclays were unable to prevent this transaction at the time. But, Barclays had already challenged this transaction the previous year when Mr S had earlier disputed it. Barclays letter to G at the time explained that G hadn't provided proof of the transaction and they weren't going to take the payment from Mr S's account.*

*When G pushed through the payment on this occasion, they provided evidence to Barclays and it was this evidence that persuaded them not to challenge the payment, despite Mr S explaining that he'd already settled the amount.*

*Mr S was able to supply copies of accounts he held with another bank that showed the disputed payment that G took from Barclays had already been paid. The statements show that G took the payment and then it was temporarily refunded to Mr S. Some months later, in March 2019, the amount was redebited again. From the information supplied by Mr S, it appears that the outstanding amount was already settled with G. Unfortunately, we've not been able to confirm what happened directly with G, despite repeated attempts to ask for this information.*

*So, from the evidence I've been able to examine, the invoice was already settled with G when they took it again from Mr S's Barclays account. Barclays decision not to pursue the charge resulted in Mr S losing the opportunity to challenge G about it. If Barclays had opened a new chargeback, they would presumably have ended with the same information we received and been able to pass this back to G and settle the matter directly with them.*

*Their decision not to pursue this resulted in an unfair outcome for Mr S. If, as the statements show, the matter had already been settled, Mr S's account wouldn't have been overdrawn. So, I'm intending to uphold this part of the complaint and I'll be instructing Barclays to refund Mr S with the payment taken by G, remove any charges and/or interest added to the account as a result of the payment to G, ensure that financial reporting to the credit reference agencies is updated to accurately reflect the accounts history and pay Mr S £100 for the stress and worry caused to him.*

*I invited Mr S and Barclays to give me any more evidence and information they wanted me to consider before issuing my final decision.*

Mr S accepted my provisional decision but thought he should receive a higher amount in compensation.

Barclays didn't fully accept it and responded:

- Mr S reported the transaction with G as fraud and failed to respond to Barclays request for more information within the 10-day timeframe set out in their letter to him on 23/04/21.
- Barclays were out of time to pursue a chargeback because of the lack of response from Mr S.
- Mr S responded about six weeks after this letter was sent.
- Barclays contacted G outside the chargeback process and received evidence of the invoice related to the payment that G had taken from Mr S's account.
- Barclays are unable to raise a second chargeback for the same dispute.
- Even if Mr S had responded within the timeframes, the evidence from G was compelling – so it's highly unlikely any chargeback would've been successful.
- Barclays haven't been able to verify Mr S's claim that he'd already settled this invoice.
- The transaction was agreed to by Mr S when he signed his contract with G.
- There's a genuine relationship between Mr S and G – this matter is better settled between them directly.
- The transaction isn't fraud.

Barclays were asked to comment on a note in their records from 30/04/21 where Mr S contacted them to tell them he was having problems scanning his evidence and was advised:

*"... Advised we can always relog fraud case if we do not receive them on time."*

Barclays responded that Mr S was wrongly advised when he was told this. They continued to maintain that it wouldn't have adversely affected the outcome because the evidence from G was compelling and it wasn't fraud so wouldn't have been able to satisfy the specific criteria for a fraud chargeback.

Barclays went on to further comment:

- If Mr S had evidence that he'd paid twice for the invoice, then this would "*surely*" be an easy matter to settle between himself and G.
- Barclays clarified that the transaction was pushed through by G and there's no evidence that G didn't follow the appropriate procedures when they did this.

### **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.

Having done so, I'm intending to adopt the outcome of my provisional complaint, that is to uphold it in part. Mr S agreed with my provisional decision, so I don't need to address the issue of the disputed ATM transactions any further. I'll explain my reasoning concerning the payment to G and address the additional points raised by Barclays.

Barclays have, to some extent, found themselves in the middle of a dispute between G and Mr S. G used processes available to them to push through the payment and relied on the

authority they'd received from Mr S when he first signed a contract with them. G are able to push through transactions to recoup additional charges accrued from the contract.

But, the authorisation that Mr S agreed to wouldn't be applicable if the outstanding amount had been repaid earlier. Here, Mr S's case has always been that he'd already settled this invoice with G some time ago, but for reason's unknown, G thought it was still outstanding and pushed the charge through when Mr S updated his card details with them. Mr S explained that he regularly used G and had had multiple other contracts since the outstanding invoice had been paid, so couldn't understand why G acted in this way when it had already been paid. G have been approached by the Financial Ombudsman on several occasions to shed some light on what happened, but unfortunately they've never responded to these requests.

So, the main question concerning this complaint is whether Mr S had already settled the outstanding invoice. Because if he had, then G wouldn't be able to rely on the authority they presented to Barclays to push through the transaction and later when they provided their evidence of the outstanding debt to Barclays. Mr S's other bank supplied evidence that a payment matching the invoice amount was finally paid to G in March 2019, so I think this is reasonable evidence that the outstanding invoice amount was settled at that point. It's apparent that Mr S was disputing this payment when it first appeared a few years ago, which I think has led to a rather complex history concerning whether he settled it or not.

When G pushed the payment through, they were using the VISA rules to do so. I appreciate that Barclays had little control over this because the VISA rules allow such processes. But they also provide the chargeback system to dispute payments for various different issues, including what happened here, which is that the debt had already been settled by other means.

Barclays have argued that Mr S claimed the transaction was fraudulent and wouldn't have met the conditions required for such a chargeback on this basis. Whilst I agree that this was unlikely to be fraudulent, it was a dispute about a payment and I don't think an account holder, in this case Mr S, is required to know the specifics of the chargeback system in order to make a successful claim. Chargebacks are complicated and his bank, Barclays, are the appropriate experts to advise and represent Mr S. The fact that Mr S couched his dispute as a fraud isn't relevant to the fact that he disputed the payment.

Barclays wrote to Mr S and sought a declaration from him to pursue the chargeback. A few days later after receiving this, they told Mr S that they could re-log the issue because he was having problems presenting his evidence to them. I appreciate Barclays have since said this was an error, but Mr S was then under the impression that the timescales were somewhat flexible. I understand Barclays received some further information about six weeks later. At this point, the ability to process a chargeback may well have been compromised by the delay in receiving information, but because of Mr S's understanding following the advice he was given by Barclays – I don't think it's fair to hold Mr S responsible for the failure to process a chargeback.

Barclays have said that even if they'd launched the appropriate chargeback within the timescales, it was unlikely that it would have been successful because G's evidence was compelling. Here, Barclays approached G outside the chargeback process to enquire about the details of the dispute but didn't go on to fully consider Mr S's evidence. G's contract appears to be persuasive when viewed on its own but becomes less compelling when seen against the evidence that the debt had already been repaid. It's true that the outcome of a chargeback can't be guaranteed, but what's happened here is that Mr S wasn't given the opportunity (whether that's by classing it as fraud/ mis-advising about timescales or just believing G's information) to present evidence with an appropriate chargeback request,

resulting in the unfair treatment of Mr S's claim.

Barclays commented that it should be a matter between Mr S and G and to an extent I agree. Mr S presented evidence that he'd tried to deal with G to resolve the issue but was unsuccessful. It looks like it was far from easy and in such circumstances Mr S still had the option of approaching his bank to challenge the payment, which is what he did here.

In my provisional decision I referred to an earlier dispute about the outstanding amount that was linked to Barclays. This was from an email sent in late 2018 and Barclays have explained they weren't previously involved in any earlier dispute. Whilst the content of the email refers to the same outstanding amount G believed they were owed, there's no evidence that this was pursued by Barclays at the time and I've not considered this as part of my examination.

### *Increased compensation*

Mr S thought that the amount of compensation I recommended was too low. He explained that he'd suffered stress throughout this whole period. I've carefully considered the circumstances of the complaint and appreciate that Mr S has been left with this debt hanging over him. But, I'm not persuaded to increase this amount and that's because whilst Barclays are the subject of this complaint, I can't ignore the role that G played here.

### **Putting things right**

In summary, I don't think that Mr S's evidence was given sufficient consideration when he brought his claim to Barclays. They had the opportunity to pursue a chargeback, but for various reasons didn't, but they did seek information from G which led them to believe the evidence was compelling. I think this has led to a slight imbalance in how Mr S was treated and denied him the opportunity to argue his case through a chargeback. With the evidence that it had already been paid, I think the outcome stood a reasonable chance of success. As the outstanding amount had already been repaid, G couldn't continue to rely on the authorisation they presented to Barclays. So, if I wasn't upholding this complaint based on the way the chargeback was handled, I'd still be likely to uphold it based on the evidence that it had already been settled and the authorisation was no longer applicable.

For the avoidance of any doubt, I don't uphold the disputed transactions claimed by Mr S related to ATM transactions made whilst abroad.

### **My final decision**

My final decision is that I uphold this complaint, in part, and instruct Barclays Bank UK Plc to:

- Refund £818.00 to Mr S.
- Remove any charges and / or interest applied to the account as a result of this charge.
- Update reporting to the credit reference agencies to accurately reflect the accounts history.
- Pay £100 to Mr S for the stress and worry caused by Barclays.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 April 2022.

David Perry  
**Ombudsman**