

## **The complaint**

Mr C complains Barclays Bank UK PLC ("Barclays") is refusing to refund transactions that were carried out fraudulently on his account by his brother ("Mr D") who had been impersonating him for over 25 years.

Mr C is represented by his partner, Miss K. Where appropriate I will refer to Miss K in my decision.

## **What happened**

In August 2019, Mr C - along with Miss K - says he went into a Barclays branch to question, and stop, his unauthorised overdraft and related fees. It's at that point Mr C says he went on a path of discovery, which led him to conclude he was the victim of long-standing impersonation fraud by Mr D.

Mr C says he was told by Barclays' staff at that point, that no further money would be taken from his account unless it was by him in person at the branch. Over £500 was taken from Mr C's account the following day through online banking.

Given the concerns about Mr D impersonating Mr C, Miss K started looking into matters in more detail. As a result, Miss K says Mr C's account has had substantive transactions debited from it which he didn't authorise for well over 20 years. And that Mr C has been the victim of complex fraud carried out by Mr D - engineered through coercive control and manipulation.

The type of transactions in dispute are known to both parties, but to summarise, they include debit card payments, ATM withdrawals, Faster payments, Direct Debits; payments using online and mobile banking to Mr D, and standing orders.

Miss K, on behalf of Mr C, has made several complaint points to Barclays, and it in turn has sent several responses. Unhappy with Barclays' answers, Mr C referred his complaint to this service.

Our Investigator was able to summarise the key points Miss K, on behalf of Mr C, has made. I will set them out here:

- Mr C doesn't use online banking. He didn't even know it was set-up on his account until he went into branch in August 2019
- He's never used mobile banking, nor does he have it set-up on his mobile phone
- Mr C doesn't have a computer
- He doesn't know how Mr D knew his PIN. It's not written down or stored anywhere
- Mr C has never given his debit card nor PIN to his brother – nor has he ever consented to him using it
- He won't talk about issues surrounding the card and PIN. That's because he's in a state of shock about the theft and deception Mr D has carried out
- The PIN number hasn't been changed in five years. And he keeps his card in a wallet

- He has the same mobile number since 2002, but there are no security measures on it
- Mr C didn't monitor his account
- He only paid for items in cash using the same Barclays ATM each time to withdraw cash
- Mr C can't confirm if he received statements by post or electronically. And he didn't know he could check his balance at an ATM machine

### Our investigation

One of our Investigator's looked into the matter. In summary they found:

- The transactions were authenticated as the genuine card, its details, and PIN were used. And the personalised set of procedures were completed on them
- It's likely Mr C gave his card and PIN details to Mr D some time ago, which explains how he would have known the security credentials
- Mr C says he never registered for mobile banking. But Barclays' records show mobile banking was registered to his mobile telephone number - and this device has been used throughout
- As some of the disputed transactions have been going on for many years, like a direct debit since 2012, and given the amounts and frequency, it's difficult to understand how Mr C has not noticed them before
- Mr C was in regular employment and on a reasonable income. So given how long this was going on for, and as he says he never had much money; this ought to have made him question what was going on. Because of this, it was most likely Mr C knew what was happening - and simply allowed Mr D to use his account in this way.

This means Mr C most likely gave his brother authority and allowed him to carry out the transactions. In turn, consenting to the transactions Mr D was carrying out

- Direct debit guarantee claims generally relate to where payment errors have occurred
- Mr C hasn't provided any details to show he was under the coercive control of Mr D
- Under the Payments Service Regulations ("PSRs"), Barclays isn't liable to refund transactions if a consumer felt forced or manipulated into making them. Consent under the PSRs isn't the same as informed consent
- Given how long the activity was taking place on Mr C's account, it's difficult to say Barclays ought to have noticed something was wrong. As regular statements were being sent to Mr C, it was incumbent upon him to take reasonable care to monitor his account and report any unrecognised transactions
- Barclays have however made some errors, they are:
  - A standing order mandate produced by Mr C, shows it wasn't his signature when compared to his passport signature. Barclays should have verified this better

- No payments should have been permitted from the account after Mr C told Barclays to do so when he visited the branch in August 2019. As Barclays failed to disable Mr C's online and mobile banking, the two faster payments, totalling £542, made after this point should be refunded
- Mr C had asked for all correspondence to be done in writing. Despite this, Barclays made several attempts to call Mr C, after which it closed its file when no contact was established. Even though speaking to Mr C would have been helpful for Barclays' investigation of the complaint, it should have written to him. Because of this Barclays should pay £200 compensation in addition to £250 that it had already paid for poor customer service
- Miss K paid around £244 of overdraft fees for Mr C after discovering the account was in overdraft, but Barclays doesn't have to refund these as they were correctly applied.

Also, as these fees were paid by Miss K, they represent a financial loss to her. That means she isn't an eligible complainant for the purposes of this complaint. Miss K doesn't have a qualifying relationship with Barclays in relationship to Mr C's complaint.

Miss K did not agree with what our Investigator said. Some of the key points she made were:

- Barclays would not place a stop on Mr C's account until the overdraft charges were paid off, that's why Miss K used her own funds
- Barclays should refund direct debit payments to another company as it had done so with previous direct debits to another company. And it should also refund all payments to any company it previously made direct debit refunds for
- All transactions by direct debit, card payments ATM withdrawals and faster payments Mr C doesn't recognise, and disputes, should be refunded
- Why didn't Barclays question Faster payments to Mr D which put the account in an unauthorised overdraft. This was irregular and Barclays should have noticed something was wrong
- Any assumptions about Mr C authorising transactions are wrong. Mr C is in a state of shock about what his brother, Mr D, has done
- Mr C and Mr D lived at the same address, not the same property, for a few months and not years
- Mr C never registered for mobile banking using his telephone number. He does not have any apps on his phone, nor does he know how to download them. Barclays cannot prove Mr C's device was used to make these Faster payments
- The payments made from the account to gambling companies demonstrate Mr D was a gambler
- Barclays should be held responsible for any payments to Mr D's account as they typically led to the account going into an unauthorised overdraft and Mr C incurring fees and charges as a result

- £200 isn't adequate compensation for Barclays closing its file when it couldn't make phone contact with Mr C. Given Mr C's condition, Barclays' actions do not comply with diversity and inclusion requirements
- Miss K only paid the overdraft fees on the account when she did as she was told the only way to stop fees escalating was by settling the account

In response, our Investigator said Barclays' internal notes show there's mention of an overdraft in 2006 and one appears to have been put in place. And in 2014, due to a change in Barclays' overdraft pricing, an 'Emergency Borrowing' facility was applied on the account.

This suggests charges applied were done so correctly when the account went into overdraft. Miss K disputes this. She says Barclays' actions in letting the account go above any overdraft limit caused fees and charges to be applied. Miss K also contests how Mr C's actual phone could have been used.

As Mr C and his representative, Miss K, didn't agree with what our investigator said, the matter was passed to me to decide.

### My provisional decision

I sent both Mr C and Barclays my provision decision in early March 2022. I said I was thinking of coming to the same outcome as our Investigator – but that my recommendations to put things right would be a little different.

For ease of reference, here is what I said:

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

*Having done that, I'm planning to partially uphold this complaint. I know parts of what I'm about to say will disappoint Mr C and Miss K. So I'll explain why.*

*Generally, Barclays can hold Mr C liable for the disputed payments if the evidence suggests that it's more likely than not, he made or authorised them himself.*

*It's important at this stage I point out that if evidence isn't complete or conclusive, I can make my decision based on what I think is most likely to have happened. In other words, I can decide matters on the balance of probabilities.*

*I'm satisfied from the bank's technical evidence that Mr C's genuine card and PIN were used to make the disputed transactions. And in the case of the other transactions that are being disputed, the correct personalised set of procedures were likely used.*

*But the regulations relevant to this case say that is not, on its own, enough to enable Barclays to hold Mr C liable. So I also need to think about whether the evidence suggests it's more likely than not Mr C consented to the transactions being made.*

*At the heart of this complaint is the argument that Mr C was manipulated and coerced by Mr D for a significant period of time – and that he impersonated him for well over 20 years. Miss K says Mr C is in a state of shock about this. And so, he isn't giving any detail about it. I appreciate and don't undervalue why Mr C is in this condition if what he says is true. But without stronger evidence, I'm not, on balance, able to find he didn't consent, and therefore authorise the transactions which are in dispute here. There are a number of reasons I say this:*

- Barclays have sent me its internal records. On one entry, after August 2019 when Mr C says he discovered what was going on, it says he told staff members he had given his card and PIN to his brother some time ago.

*I appreciate Miss K says Mr C never shared his PIN nor did he give anyone his card, but this record runs contrary to that. What Mr C would have said in branch is most likely to be a contemporaneous record. Because of that, I am putting more weight on it. It also explains how Mr D would have been able to carry out the transactions in lieu of no other explanation or information.*

*So, I accept its possible Mr D used Mr C's debit card details, but that doesn't necessarily mean he didn't authorise them. If he did give - as I think is the most likely explanation here - these details to Mr D, then he has either given express authority or apparent authority to him. By the latter I mean, Mr D may have made payments Mr C didn't expressly consent to, but by giving him his card and PIN and the authority to use them, it still amounts to consent*

- Barclays have given me its internal records which show all mobile banking transactions from 2018 were carried out from the same device and from the telephone number Mr C has told us is his. I note Miss K disputes this matter strongly saying Mr C doesn't use apps. But I must make my findings on the evidence available to me, and that shows mobile banking transactions were made from Mr C's phone - a number he still has, and one given to this service for him.

*Given Mr C hasn't said anything about how his brother coerced him, I can't on balance be persuaded he didn't know what was happening and that he didn't consent to payments to him. After all, based on the information I have, it's not possible to know what financial arrangements were in place between Mr C and Mr D*

- Barclays' records show account statements were being sent to Mr C in the post. Miss K says Mr D has been deceiving Mr C for well over 20 years, and he lives frugally and has little money to spend on himself. When asked, Miss K hasn't said Mr C suffers from any vulnerability which I need to consider which may affect his ability to monitor his account.

*I note Mr C says he didn't monitor his account, but given he had a reasonable income, I find it difficult to understand why he didn't question why he was short on money. I also find it difficult to fathom why he never questioned anything if he didn't know, or authorise, the transactions his brother was making*

- I note our Investigator said that under the PSRs Barclays isn't liable to refund Mr C even if he feels he was coerced into allowing Mr D to do so. And that consent under the PSRs isn't the same as informed consent. Our Investigator was right to say this
- Miss K has said all direct debits which Mr C didn't know about should be refunded under the Direct Debit Guarantee scheme. I accept its possible Mr D was impersonating his brother. But I've already said its most likely Mr C gave Mr D authority to use his account. So, without compelling evidence to the contrary it appears he was likely authorised to set up direct debits too.

*In any case, the Direct Debit Guarantee scheme normally applies where an error has been made with the payment being collected. I note Miss K argues Barclays has refunded some direct debits but not all. That may be the case, but I have to decide if I think its most likely Mr C authorised the setting up of these payments albeit by given*

*permission to Mr D. And, as I've said, I think that's what's most likely to have happened here*

*Miss K argues Barclays ought to have picked up on something not being right with how the account was being used when it went into an unarranged overdraft and incurred substantive fees. And that regular payments going to Mr D, should have made Barclays intervene and question the activity as unusual.*

*I've seen Barclays' internal records which show an overdraft limit was agreed in both 2006 and 2014. Given the extent of this financial relationship between Mr C and Mr D could go back over 25 years, I can't see how Barclays would've have deemed behaviour consistent over that period as unusual for it to intervene. Statements were also being sent to Mr C over this period, which would have assured Barclays Mr C knew what was happening with his account.*

*So, in conclusion, after weighing everything up, I'm persuaded it's more likely than not Mr C consented and thereby authorised the transaction he disputes. At the heart of this finding is the fact that we know little about the nature of the relationship, and therein any agreement, he may have had with Mr D at that time. So based on what I've seen, its most likely Mr C gave Mr D authority, whether that be express or apparent, to use his banking credentials.*

*Having said that, I do think there are several things Barclays have got wrong. They are:*

- Barclays paid a standing order from Mr C's account for £500. The mandate for this shows a different signature to that on Mr C's passport. Barclays should have carried out a reasonable verification check of this and it appears that it hasn't*
- Barclays allowed Faster payments totalling £542 to leave Mr C's account after he had told them to put a stop on his account in August 2019*
- Mr C incurred overdraft charges on his account of around £244 after this point. These charges would not have applied to the account had Barclays done what it should have – that is stop any further payments. Because of that, these fees should be refunded*
- Barclays tried to call Mr C when it had been told expressly to communicate only in writing. Due to not being able to speak to Mr C, it appears Barclays suspended its investigation. I note Miss K says Mr C has a medical condition which is why he only wanted to communicate in this way. I haven't seen that Barclays had been made aware of this, so I don't think he's been discriminated against because of that.*

*But Barclays should have followed those instructions and not just paused on matters because it couldn't speak to Mr C on the phone. This no doubt has caused some delay and caused distress. Because of that I'm persuaded Barclays should pay £250 on top of the £250 it has already paid to Mr C*

*To put things right, I said Barclays should:*

- Refund £542 to Mr C for payments that should not have been made in August 2019. And it should pay 8% simple interest from when this amount debited the account to settlement*
- Refund Mr C, £500 for the standing order that should not have been honoured by Barclays. And pay him 8% simple interest from when it debited the account to settlement. Barclays should also refund any fees and charges Mr C incurred because of this*

- *Refund any fees and charges that have not already been refunded that occurred because Barclays allowed Faster payments to be made after Mr C told it to stop the account in August 2019. This is to include the fees of £244.60 applied to the account*
- *Pay Mr C £250 for the poor customer service and the distress this has caused him*

### Further responses

I then gave both parties an opportunity to send any further evidence or arguments. Miss K made the following points:

- Mr C's account has effectively been dormant since August 2019. But in early 2021, it became apparent two unauthorised direct debit payments were being made to a company.

Miss K asked if this matter be considered as part of this complaint – or whether it needed to be dealt with separately

- Mr C spent the Christmas of 2021 with Miss K and her mother. They learnt then that Mr C changed his phone and gave the old one to Mr D thinking that he was going to sell it

I then responded to Miss K, and informed Barclays of what I had said.

I said I was minded to reach my final decision in line with what I had said in my provisional decision. But, having looked at matters again, I was now looking to change part of what I said Barclays need to do to put things right.

In reaching this conclusion, I looked closely at the statement Barclays have given me for Mr C's account. On 20 August 2019, the account was overdrawn by around £245. This is a few days before Miss K and Mr C went into the branch and told Barclays to stop all payments from the account.

Then, on the 23 August 2019, payments of £42 and then £500 by Faster payments are made from the account. As, I'd already said in my provisional decision, these shouldn't have been allowed by Barclays given Mr C told it on the same day to stop further payments.

Mr C's account is then credited with around £543, also on 23 August 2019. Having looked at details of this credit, I'm satisfied it was Mr C's salary. I say that because a payment around this amount is made around every seven days from the same source. The amount received and the regularity of payments are consistent with what Mr C has said about his income.

Miss K then paid around £244 - shown as credited on 23 August 2019 to put Mr C's account into a zero balance. So, given the account was overdrawn by around £245, and payments were made of £542; a salary credit of around £543 would have left the account overdrawn by about £244.60. The same amount Miss K paid to reduce the account to a zero balance.

This means Barclays' mistake in letting the £542 payments leave the account did not, in of itself, lead to Miss K paying off charges resulting from this error. These charges were the net product of the prevailing overdraft before Mr C asked Barclays to stop further payments on 23 August 2019.

So I was mistaken in concluding the payment Miss K made of around £244 wouldn't have had to have been made had Barclays stopped the two Faster payments. In turn, this means

our Investigator was right to say that as Miss K paid these fees herself, and did so of her own will, it no longer represent a loss for Mr C.

We can only consider losses experienced by the person who is eligible to complain, which is Mr C. Under our rules Miss K isn't the eligible complainant because she wasn't the account holder and so doesn't have a qualifying relationship with Barclays in relation to this complaint.

I said I was sorry for changing my position on this matter, especially as it's something Miss K and Mr C feel strongly about.

I also explained that Mr C would have to raise the matter about unauthorised direct debit payments in 2021 to Barclays in the first instance. And as such, that is a separate matter to what I am deciding here.

Finally, I explained that although Mr C may have given his old phone to Mr D to sell, he still has the same number now – given we have the same telephone number registered on our systems at the service. I said its very unlikely the same telephone number is being used at the same time from two separate mobile phone devices. A mobile telephone number is typically linked to the SIM card inserted into the phone, which means the phone being used can only have that number.

I gave both Mr C and Barclays a further opportunity for comment and to give me any new evidence. Barclays accepted what I said. Miss K, on behalf of Mr C, has in summary said:

- They do not agree Barclays doesn't have to repay Miss K's payment of around £244.

The salary payment of around £543 into Mr C's account at midnight on Thursday 22 August 2019 meant the overdraft of about £245 on his account on Monday 19 August 2019 was cleared. So no overdraft existed after his wages were paid in by electronic transfer, and there was a balance of about £297 in credit on his account.

When £500 was taken out of the account by electronic transfer a few minutes after midnight, and a further £42 later, on Friday 23 August 2019, this left the account overdrawn by about £244.

So by not stopping the electronic withdrawals as instructed by Mr C when he visited the bank on 22 August 2019, Barclays created an account deficit that would not otherwise have existed. This account deficit of about £244 was the money that Barclays demanded be paid on Friday 23 August 2019 otherwise, as it said, Mr C would have charged emergency borrowing fees and would not have put the account on hold. So, Miss K says she had no choice but to pay the £244 on Mr C's behalf.

Miss K has provided 'work sheets' of the account during that period for me to consider which she says show the correct order of transactions on the account. Miss K adds it's unfair not to require Barclays to repay an overdraft it created.

- Miss K says her demonstration of the same data showing on her phone whilst abroad, and then on her old phone in the UK, is evidence that when a mobile phone is upgraded, the phone number retained for use in the new phone, the SIM card retained in the old phone and a new SIM card inserted in the new phone, both phones can be used with the same number since the new phone is simply a clone of the phone that it's replacing



- Mr D had assured Mr C he would restore the factory settings before selling it. Because of this, there's reasonable doubt Mr C was not the user of the phone that was used to carry out all mobile banking from 2018 - and he did not know the phone he gave to his brother was being used for that purpose
- You [*the Ombudsman*] recommend Barclays pay Mr C £250 compensation for poor customer service when, instead of writing to Mr C, they simply closed his complaint. The complaint to the fraud department was of substantial fraud on Mr C's account, yet instead of directing the fraud department to investigate the fraud, the recommendation is Barclays pay him £250 for "poor customer service"

As Barclays, Mr C and Miss K have now had an opportunity to make further representations, it follows that I must decide this matter.

### **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 that, I've decided to partially uphold this complaint for the reasons I gave in my provisional decision – as above. I'll be directing Barclays to put things right as set-out in my provisional decision, and as amended in my further responses – also detailed above.

I know this will disappoint Mr C and Miss K. Because of that, I will explain why I have not changed my mind following their most recent response.

#### *Phone used for mobile banking*

I note what Miss K says about data showing on a previous phone simultaneously to that of a new mobile phone. And I have no reason to doubt the credibility of the evidence she has sent in to demonstrate this.

But data, like emails or social media accounts, are a very different thing to phone calls – and therefore a registered phone number showing against a device. SIM card inserted into mobile phones contain a unique telephone number.

Barclays' technical data shows the exact phone number was used. So, the matter relates to the SIM card. It is my understanding, that when mobile phones are changed by the user, the SIM card – or more precisely, the unique digital data it holds – is transferred to the new phone. If, and when, new SIM cards are produced for the same telephone number, I understand that the previous one becomes defunct.

All of this means that only one phone number is likely to be in use, on any one mobile device.

I do however accept phone numbers can be cloned. In other words the same number can co-exist on another mobile device. But I haven't seen compelling enough evidence to persuade me this is what was happening. It's something that we don't see very often given the technical expertise and knowledge needed to carry it out. And, I think it's unlikely Mr D, without strong information to the contrary, took these onerous steps to clone just Mr C's phone number for this purpose.

So that means I still think it more likely Mr C authorised Mr D to use his phone.

#### *Refund of Miss K's payment*

I've carefully considered what Miss K has said about the money she paid to settle Mr C's account to a zero balance to avoid him incurring emergency borrowing fees and charges. I've also closely considered what she's said about the timings of the various transactions and carefully reviewed the worksheets or statements she's sent in.

Having done that, I still think the fees she paid of around £244 should not be refunded to Mr C. I say this for the reasons I've already given, and because I will be directing Barclays to refund the two unauthorised transactions of £500 and £42. By doing that, Mr C is put back in the position he would have been after his salary was paid in on 22 August 2019. That in turn means his account would be in credit at that moment in time by around £297. Miss K only paid around £244 to reduce the balance to zero as the two transactions amounting to £542 was erroneously paid out.

By refunding £244 to Mr C he would in effect be doubly awarded. As Miss K is not an eligible complainant given, she doesn't hold a qualifying relationship with Barclays in relation to this complaint, any recovery of what she paid needs to be taken up with Mr C directly.

### Poor customer service

Mr C feels a £250 award isn't fair compensation given Barclays closed a fraud investigation it should otherwise have continued to investigate by writing to him. It's clear Barclays failed to handle the complaint as it ought to have – which in turn means it handled the matter poorly.

Mr C's fraud claim was ultimately looked into – albeit that it took a complaint, and to some extent this service's involvement, to have matters looked into as they ought to have been. So in terms of any detriment Mr C suffered, this is limited to delay, poor complaint handling and customer service.

So I still think £250, on top of the £250 Barclays have already paid - so £500 in total - is fair compensation. I explained my reasons for this in my provisional decision.

### **Putting things right**

To put things right, Barclays Bank UK PLC should:

- Refund £542 to Mr C for payments that should not have been made in August 2019. And it should pay 8% simple interest from when this amount debited the account to settlement
- Refund Mr C, £500 for the standing order that should not have been honoured by Barclays. And pay him 8% simple interest from when it debited the account to settlement. Barclays should also refund any fees and charges Mr C incurred because of this
- Pay Mr C a further £250 for the poor customer service and the distress this has caused him

### **My final decision**

For the reasons I've explained above, I uphold this complaint in part. I now direct Barclays Bank UK PLC to put things right as set-out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 May 2022.

Ketan Nagla  
**Ombudsman**