

The complaint

Mr M complains Barclays Bank UK PLC (Barclays) won't refund him for a cash machine withdrawal.

What happened

Mr M used a travel card top up machine, adding £10 to the travel card. Mr M checked his account later and saw £300 had been withdrawn from a cash machine around the same time. Mr M hadn't lost his card.

Mr M contacted Barclays and told it he hadn't withdrawn the £300. Barclays investigated the withdrawal and saw both transactions had been made using Mr M's card and personal identification number (PIN).

Barclays' investigation showed the two transactions took place eight seconds apart, and decided this didn't give a random third party time to use Mr M's card and return it to him. Barclays didn't refund Mr M as it thought he'd carried out the transactions.

Mr M brought his complaint to this service, and an investigator looked into things. The investigator thought Mr M's complaint should be upheld.

The investigator didn't think Barclays had provided any explanation as to how the two transactions could have been carried out using the same card and PIN, when considering the timings of the transactions.

Barclays didn't agree with the investigator's assessment. Barclays said it only needed to prove authorisation of the transactions, and it had done this. Barclays suggested the technical evidence for the £10 transaction may be incorrect.

Barclays asked for an ombudsman to decide things.

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.

Regulation 67 of the Payment Services Regulations 2017 explains:

67.—(1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to— (a) the execution of the payment transaction; or (b) the execution of a series of payment transactions of which that payment transaction forms part.

Whether a payment transaction has been authorised or not is important because account

holders will usually be liable for payments they've authorised and, generally, banks will be liable for unauthorised payments.

If Mr M made the disputed transactions himself, it wouldn't be fair to ask Barclays to refund them. But Mr M says he wasn't involved in the £300 withdrawal. The key question for me to consider is whether Barclays has provided enough evidence to hold Mr M liable.

Barclays can only refuse to refund unauthorised payments if it can prove Mr M authorised them, but Barclays can't simply say the use of the card and PIN issued to Mr M conclusively proves the payments were authorised.

This is in line with the FCA's position, as outlined in its document setting out its role under the Payment Services Regulations 2017.

The FCA says:

To avoid doubt, it is not sufficient for the PSP (Barclays) to assert that the customer "must have" divulged the personalised security features of the payment instrument, and to effectively require the customer to prove that he did not.

The burden of proof lies with the PSP and if a claim that a transaction is unauthorised is rejected, the rejection must be supported by sufficient evidence to prove that the customer is guilty of fraud, gross negligence or intentional breach and the reason for the rejection must be explained to the customer.

Unless Barclays can show consent has been given, it has no authority to make the payment or to debit Mr M's account and any such transaction must be regarded as unauthorised.

I've looked closely at the technical evidence provided, and this shows the two transactions took place eight seconds apart. And the cash machine withdrawal was some considerable distance from the travel card top up machine.

I don't believe it would be possible to carry both transactions out, with the same card, if the timings are correct.

Barclays has suggested the travel card top up transaction was offline, which might mean the transaction was carried out at a different time but authorised later. Barclays also suggested the timing of the transaction is incorrect on the technical evidence.

The technical evidence says the transaction wasn't offline, so I believe the transaction was carried out, and authorised, at the same time. And Mr M has provided proof, from the travel card company, to show his card was credited at the same time as the technical evidence.

Overall, I'm persuaded the technical evidence for both transactions is correct. This means I think the two transactions took place just eight seconds apart. I don't think this is possible.

This means I don't think it would be fair, in these specific circumstances, for Barclays to hold Mr M liable for the £300 transaction. And this is even though the technical evidence shows both transactions were carried out using Mr M's card and PIN. I don't believe Mr M consented to the cash machine withdrawal.

Barclays has said the FCA guidance isn't relevant here as it isn't accusing Mr M of fraud,

gross negligence or an intentional breach. But Barclays is saying Mr M is asking for a £300 refund when he carried out the transaction.

If Mr M is asking for a refund of a payment he made, he may be guilty of fraud, he would be trying to get £300 from Barclays he's not entitled to. I believe the FCA guidance is relevant here, so it follows it's for Barclays to prove how these transactions were carried out by Mr M, not for Mr M, or I, to prove they weren't carried out by him.

Barclays has relied on the technical evidence to say Mr M must have authorised the two transactions using his genuine card and PIN. But this same technical evidence suggests it was impossible for the two transactions to be carried out, eight seconds apart.

And I don't think Barclays has said anything that persuasively explains how the two transactions could have been performed, and relies on the technical evidence.

In the absence of any other evidence, and having considered the evidence Mr M has, I don't think it would be fair for Barclays to hold Mr M liable for the £300 cash machine withdrawal.

Putting things right

Because I don't believe it's fair to hold Mr M liable for the cash machine withdrawal, Mr M should be refunded the £300. Mr M has been deprived of this £300, so it's fair Barclays pays 8% simple interest per year on this amount.

Mr M has explained the lack of this £300 has meant it's been a struggle to pay bills. In the circumstances, I think a payment of £50 for the inconvenience Mr M's been caused is fair.

My final decision

My final decision is I uphold this complaint and Barclays should:

- refund Mr M £300
- pay 8% simple interest on the £300 from the date of the transaction to the date of settlement
- pay Mr M £50 to compensate him for the distress and inconvenience he's been caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 October 2022.

Chris Russ

Ombudsman