

Complaint

Mrs P complains that Barclays Bank UK Plc (“Barclays”) unfairly refused to refund a debit card transaction which she says she never authorised.

Background

In March 2021, Mrs P contacted Barclays about a £600 debit card payment made via a well-known third-party payment service operator. Mrs P told Barclays that she didn’t authorise the transaction. During the call where she reported the transaction she said that her account was hacked and she didn’t have an account with the payment service operator used. Finally, Mrs P confirmed that her debit card hadn’t been lost and had been in her possession at all times. Mrs P confirmed that her last transaction was made by her partner on the morning of the disputed transaction.

Barclays temporarily refunded the disputed amount pending an investigation into the transaction. It concluded that the details held by the payment service operator, for the transaction, matched the details it had for Mrs P. There were also numerous other transactions, which appeared to have been made by Mrs P, which weren’t in dispute and which had used the same account details. So it didn’t consider the transaction fraudulent, held Mrs P liable for it and re-debited the amount from her account. Mrs P was dissatisfied at this and referred matters to our service.

One of our adjudicators contacted Mrs P before issuing her findings. Mrs P told our adjudicator that her partner only used the internet on rare occasions and usually with her. She runs a small B&B and the guests have access to the internet using WiFi as they are provided with the password. And the previous transactions Barclays referred to were made using her debit card rather than an account, with the payment service operator, as she doesn’t have one with it.

After considering everything that had been provided, our adjudicator thought it was more likely than not that Mrs P had authorised the transaction. She thought that the transaction was made using the same details as those used on several previous, undisputed, occasions and as Mrs P confirmed no one else had access to her card it wasn’t unfair for Barclays to hold her liable for the transaction. So she didn’t uphold the complaint.

Mrs P disagreed and asked for an ombudsman to review her complaint.

My provisional decision of 9 August 2022

I issued a provisional decision – on 9 August 2022 - setting out why I was intending to uphold Mrs P’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by setting out that the relevant law here is the Payment Services Regulations 2017. These regulations say that a payment transaction is authorised by the payer where the payer has given its consent to the execution to the payment transaction. Such consent must be

given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

Unless the payment service provider can show consent has been given, it has no authority to make a payment or debit the customer's account. Where a payment service user denies having authorised a payment transaction, it is for the payment service provider to prove that the payment transaction in question were authorised by the customer.

Having considered the facts as well as the relevant law, I was satisfied that the key question I needed to determine was whether it was more likely than not that Mrs P authorised the transaction in question.

In other words, I needed to decide whether Mrs P made the transaction herself or gave someone permission to do so. This is important because a customer will usually be liable for payments they've authorised and generally speaking, a bank will be liable for any unauthorised payments.

This transaction was carried out online, using a well-known third-party payment system, without the card being physically presented. Broadly speaking, a customer isn't normally responsible for any unauthorised transactions carried out online.

Barclays believed that Mrs P authorised the transaction. As I understood it, the crux of its case was:

- The number of inconsistencies throughout the case meant that it was reasonable for it to hold Mrs P liable for the transaction. In particular, Barclays focused on the fact that Mrs P said she didn't have an account with the third-party payment used to make the payment before then saying that she used the system as a guest.
- In any event, the merchant provided evidence the transaction was made through an account with the third-party payment system, which was linked with Mrs P.
- This account had Mrs P's confirmed personal and address details.
- There were other, non-disputed, transactions with Mrs P's debit card using the same third-party payment system account.
- The IP address used for this transaction matched one previously used for transactions on the third-party payment system account.

On the other hand, Mrs P consistently said that she didn't have an account with the third-party payment system operator and she only ever made transactions, via the operator, on a guest basis.

I thought about what Barclays and Mrs P had said.

I didn't know whether Mrs P had an account with the operator, or whether she, as she said, used its system as a guest. The information provided didn't categorically answer this question. Although, I thought it was worth noting that when our adjudicator asked the third-party payment system operator for the details of any account that Mrs P may hold with it, it confirmed that it couldn't locate an account on its systems using Mrs P's name and email address. And it also said these are the details it would use to find an account for one of its customers.

In any event, I didn't think that Mrs P had been inconsistent in the way that Barclays appeared to be suggesting. I said this because I thought that she simply answered the questions that she was asked. Mrs P said that she didn't have an account with the third-party payment system. In my view, this wasn't the same as saying that she never used the payment system before. Furthermore, having looked through everything provided, I couldn't see that Mrs P had ever said that she never used the website in question to make previous purchases either. So I didn't think that the information Barclays obtained showed that Mrs P had been inconsistent in what she had said.

The payment system operator and Barclays by extension had argued that the disputed transaction was consistent with Mrs P's previous activity. It was argued that the IP address, billing address and shipping address for the disputed transaction was similar to what was used in 12 previous transactions, which Mrs P hadn't disputed authorising, in the previous 18 months.

I looked at the evidence provided. All of Mrs P's previous purchases appeared to be from three specific sellers. And I thought it was fair to say that they were all relatively low value purchases (the lowest priced item was £2.50 and the most expensive £20.99) for what appeared to be clothing. However, the transaction that was the subject of this dispute was a £600 purchase for an electronic item from a seller Mrs P didn't appear to have used previously. So rather than being consistent with Mrs P's previous activity, this disputed transaction actually appeared out of kilter with Mrs P's previous purchases on the website concerned using the payment operator.

I was also unsure as to what the payment system operator meant when it said the IP address, billing address and shipping address for the disputed transaction was similar to what was used in 12 previous transactions. Either the details were the same or they were not. I was unsure as to how they could be similar – especially as any similarities, or differences, had actually been pointed out.

I thought that it was also worth noting that Barclays was relying on Mrs P having consented to this payment because her correct card details as well as her full address details were used to validate it and the IP address recorded by the payment operator was one that Mrs P had, on occasion, used to make transactions previously. But I couldn't see that the payment operator's evidence actually showed the IP address that any of the transactions were made from.

I was also concerned that even though it had been put forward that Mrs P's full address was used to authenticate the transaction, neither the payment system operator nor Barclays had been able to provide anything which demonstrated the item purchased was dispatched to Mrs P's address let alone received there.

Furthermore, while there was initially a suggestion that Mrs P's debit card CVV number was used to confirm the transaction and our adjudicator referred to this being the case in her assessment, Barclays had since confirmed that this wasn't entered. So I thought that we were essentially left with Barclays and the payment operator only really being able to evidence that Mrs P's genuine card details were used to authenticate this transaction.

Barclays' records also appeared to indicate that this transaction was authorised at 1.47 AM. I acknowledged that this in itself didn't mean that Mrs P didn't authorise the transaction and I didn't have the times that the other, non-disputed, transactions with the payment operator were made either. So I did accept that it was possible that the timing of this particular transaction wasn't out of keeping with Mrs P's online shopping habits. But bearing in mind what I had already said about Mrs P's previous history of purchases on the website

concerned, I did consider it somewhat odd for her to have made this purchase – a first electronic item (at least from the website in question) – in the middle of the night.

Indeed, it was my view that much of Barclays' arguments in this case centred on its belief that Mrs P authenticated the disputed transaction. I then explained that authentication isn't the same as authorisation and even then I wasn't persuaded that the authentication evidence provided here was particularly strong either.

Equally, the evidence supplied by Barclays suggested that Mrs P had never disputed a transaction before. And it was for Barclays to prove that Mrs P authorised this payment – not for Mrs P to prove that she did not. Nonetheless, even though it wasn't for Mrs P to prove that she did not authorise the transaction, it was clear that Mrs P has gone to some lengths – obtaining a chargeback response from the payment system operator and also attempting to track where the item was delivered - to try and do this.

And I simply wasn't persuaded that Mrs P's actions were consistent with her having authorised the disputed transaction. As this was the case and there are a number of things that simply didn't add up, Barclays didn't persuade me that it was more likely than not Mrs P authorised the disputed transaction.

So overall and having considered everything, I wasn't persuaded that it was more likely than not that Mrs P did authorise the transaction she was disputing. And I didn't think that it was fair and reasonable for Barclays to hold Mrs P liable for the disputed transaction this left me intending to issue a final decision which upholds Mrs P's complaint.

Mrs P's response to my provisional decision

Mrs P didn't provide anything further for me to think about.

Barclays' response to my provisional decision

Barclays responded to my provisional decision confirming that it didn't agree with it. In summary it said:

- There is a link between the disputed transaction and a merchant Mrs P uses regularly. And the disputed transaction was made in between two transactions for the same merchant.
- My provisional decision concentrated on the payment system operator. But the information provided also suggests a merchant was involved. There is a close link between the merchant and the payment system operator, they are closely aligned and Mrs P's card details may have been stored in the system.
- It is possible that Mrs P used the opportunity to set up an agreement with the merchant to process transactions more quickly as a recurring purchase rather than new transactions each time.
- So while the transactions may not have been in character with Mrs P's usage in terms of the payment system operator, they were in character for the merchant and so there are grounds to hold Mrs P liable for the transaction.

My findings

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

reasonable in the circumstances of this complaint.

In deciding Mrs P's complaint, I've taken into account relevant law and regulations; regulators' rules, guidance and standards; industry codes of practice and what I consider to have been good industry practice at the relevant time. As the parties continue to disagree about what happened, I need to decide what I think is more likely than not to have happened here – on the balance of probabilities.

I've considered the comments in Barclays' response to my provisional decision.

Barclays says that my provisional decision concentrated on the payment system operator but the information shows that a merchant was involved. I've thought about what Barclays has said. However, I did consider the involvement of a merchant in my provisional decision. And I referred to Mrs P's previous history of purchasing items online from the website concerned.

Furthermore, while Barclays has referred to Mrs P having used the merchant's website before – which she's never disputed – it still hasn't provided me with anything at all to show that Mrs P had ever made a purchase from the individual seller, on the website concerned, in the disputed transaction, previously.

Equally, while Barclays says this transaction is in character in terms of Mrs P's previous card usage, this is based purely on the fact that Mrs P has used the website before. Again this was something that I accepted in my provisional decision. For the avoidance of doubt, I want to make it clear that I was (and remain) aware that Mrs P did make transactions on the website concerned around the time of the disputed transaction.

However, the transactions referred to are for much smaller amounts – less than £30 rather than the £600 for this disputed transaction. And Barclays hasn't provided anything at all to support that Mrs P had previously made purchases for similarly priced electronic items in the middle of the night. So I remain satisfied that this purchase was wholly out of kilter with Mrs P's previous transaction history.

Finally, while Barclays has referred to it being possible that Mrs P set up an agreement with the merchant to process transactions more quickly as a recurring purchase, it hasn't provided anything at all to support this is what happened here.

I'd also reiterate that it is Barclays that needs to prove it is more likely than not Mrs P authorised the transaction in question for it to fairly and reasonably hold Mrs P liable for it. Speculating over possibilities without rigorous evidence to support the arguments made, just isn't enough here. And, in any event, I'm satisfied that Barclays' arguments remain focused on possibility of the disputed transaction having been authenticated, rather than Mrs P having authorised it, which isn't enough for Barclays to hold Mrs P liable for it.

So overall and having considered everything, including Barclays' further arguments in response to my provisional decision, I remain satisfied that it is more likely than not Mrs P did not authorise the transaction she's disputing. This means that I don't think that it's fair and reasonable for Barclays to hold Mrs P liable for the disputed transaction and I'm upholding this complaint.

Fair compensation – what Barclays needs to do to put things right for Mrs P

Having carefully considered everything, I think that Barclays should put things right for Mrs P in the following way:

- Refund Mrs P £600;
- Add interest at 8% per year simple on the £600 from the date it was re-debited from Mrs P's account to the date of settlement†

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

My final decision

For the reasons given above and in my provisional decision of 9 August 2022, I'm upholding Mrs P's complaint. Barclays Bank UK Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 3 October 2022.

Jeshen Narayanan
Ombudsman