

The complaint

Mr M and Miss H complained because Barclays Bank UK PLC refused to refund them for payments which they said they didn't authorise.

What happened

Mr M went abroad, and on 31 May 2022 he used his card and PIN to withdraw cash to the equivalent of £87.08.

On 2 June, Mr M contacted Barclays. He said that his partner had phoned him asking about multiple cash withdrawals on their joint account, and it was then that he noticed his Barclays card was missing. He told Barclays that a few people had been behind him when he'd been withdrawing the cash on 31 May, which might have been where his PIN had been compromised.

Mr M disputed seven cash withdrawals transactions, starting on 31 May at around 13.40 pm, and ending on 2 June just after midnight. There were three on 31 May, three on 1 June, and one on 2 June. The transactions ranged from £42.65 to £258, and totalled £778.88.

Barclays blocked the card, but asked Mr M about a large credit to the account shortly before Mr M's trip. Mr M said that had been for emergency funds for his trip, and also to cover mortgage payments and his partner's general spending. Mr M also said he had a tenant who paid in cash every month, and Barclays asked for proof about the incoming money.

Barclays initially gave Mr M an incorrect email address to which he should forward the supporting evidence about where the cash deposit had come from. So it was 25 July before Barclays received the form back. But Barclays still didn't agree that the cash withdrawals totalling £778.88 had been carried out fraudulently.

Mr M complained, and Barclays issued its final response on 25 July. It apologised for having provided Mr M with an incorrect email address to which he should forward the supporting information about the incoming credit before the disputed withdrawals. It credited the account with £50 for the inconvenience of that. But Barclays said that it didn't uphold Mr M and Miss H's fraud claim, and still held them liable for the disputed £778.88.

Mr M and Miss H weren't satisfied and contacted this service.

Our investigator didn't uphold their complaint. She said that after speaking to Mr M, she couldn't understand how someone could have seen his PIN without him noticing. So she couldn't see how the PIN had been compromised. The investigator also said that the disputed transactions had taken place over three days. This wasn't typical of fraud, where a third party fraudster would normally spend the money quickly. So the investigator thought that it was most likely that Mr M authorised the disputed transactions, either by making the transactions himself or by allowing someone else to make them.

Mr M and Miss H didn't agree. Mr M said that if he'd noticed the PIN being compromised when he'd been at the cash machine, he wouldn't have taken out the money. Mr M also said

that when he'd contacted Barclays, Barclays had said there had been further attempts to take money out each day, which had been blocked when the fraudster had tried to take money over the daily maximum withdrawal. So he didn't think it was valid to say that the pattern wasn't typical of a fraudster. Mr M said the investigator hadn't looked at it thoroughly. The complaint was passed to me for an ombudsman's final decision.

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.

There are regulations which govern disputed transactions. The relevant regulations for disputed transactions taking place in May and June 2022 are the Payment Services Regulations 2017. These say that the payment service provider (here, Barclays) must show the transactions were authenticated. That's the technical part, and here, I've seen the technical evidence to show that Mr M's genuine card with its chip, and the correct PIN, were used. So the disputed payments were authenticated.

The regulations also say that it's necessary to look at whether the card holder authorised the payments. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*."

Mr M reported the card missing on 2 June, after he says Miss H contacted him to query large cash withdrawals on their account. It's surprising that he didn't notice its loss earlier, and he hasn't commented about how he thinks the card might have been either lost or stolen. He said that he thinks the way someone might have found out the PIN for the card was when he was at the cash machine on 31 May, where he withdrew the equivalent in local currency (after charges) of £87.08. He told our investigator that there were people behind him in the queue.

I've looked carefully at this and the next transaction. Mr M's genuine withdrawal took place at 13.39pm. The first disputed withdrawal took place at a different machine at 13:46 pm. So in seven minutes, any fraudster would have had to have looked over Mr M's shoulder, without Mr M being aware, to see his PIN being entered; then stolen Mr M's card, again without Mr M being aware; then gone to a different location; then completed a withdrawal for the equivalent in local currency (after charges) of £168.75.

This timescale appears to me to be very tight. It's also surprising that Mr M didn't notice anyone being close enough to see his PIN being entered, or that he didn't realise they'd stolen his card.

But even more surprising is the fact that any such fraudster only took out £168.75 at first. It would be normal for any fraudster to take out the maximum possible, starting with a high figure then, if that was rejected, reducing the amount. That's not what happened here. On 31 May, after Mr M's genuine £87.08 withdrawal and the first disputed £168.75 withdrawal, there was then another small withdrawal of £27.78. There was, as Mr M said that Barclays told him, a rejected withdrawal after that. That was for £44.37. It was rejected because the maximum daily cash withdrawal on Mr M and Miss H's card was £300, and the withdrawal would have taken the total over that limit. There are similar patterns on the subsequent days. But the pattern here isn't what a typical fraudster would do.

I've also looked at Mr M and Miss H's account. There were two large credits to it just before Mr M's trip abroad, one for £1,200 and the other for £1,000. I can see that there was a pattern of £1,000 credits, approximately monthly, to the account, and I note that Mr M said that he received rent from a tenant. But on the statements available to me, I can't see any other months when there were two large credits in this way. So I can understand why Barclays queried the credit, as it might well appear that the money had been put in the account so that there were enough funds for Mr M to spend money on his trip. It was only because of these credits that there was enough money in the account for the disputed withdrawals totalling £778.88. As far as I can see, Barclays only queried one of these credits. But it is at least a coincidence that there were large credits to the account shortly before the disputed withdrawals.

Taking all these factors into account, I think it's more likely than not that Mr M authorised the disputed cash withdrawals himself, or authorised someone else to do so on his behalf. So I do not uphold this complaint and don't require Barclays to refund him.

Finally, I've considered whether the £50 compensation which Barclays paid was fair and reasonable for the distress and inconvenience caused by its error in giving Mr M and incorrect email address to which he was to send evidence about the incoming credit. I find that it was, and don't require Barclays to increase this amount.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss H to accept or reject my decision before 25 February 2023.

Belinda Knight
Ombudsman