

The complaint

Mr D complained because Barclays Bank UK PLC refused to refund him for transactions he said he didn't make.

What happened

Mr D was on holiday abroad. Between 22 and 28 July 2023, four chip and PIN retail transactions and two chip and signature retail transactions, were made from Mr D's Barclays account. The total in sterling equivalent was £584.31.

On 31 July, Mr D contacted Barclays and said he hadn't made the transactions. He said his card had been stolen on 22 July, but that he hadn't divulged his PIN. Barclays gave a temporary refund while it investigated, in line with its normal practice. On 9 August it declined Mr D's claim, and it re-debited the temporary refund on 24 August.

Mr D complained. He told Barclays that his wallet had been stolen from his hotel room, and that his PIN was also written down in the stolen wallet. Mr D said he had also complained to the hotel.

Barclays considered Mr D's appeal, but still didn't uphold his complaint.

Mr D wasn't satisfied and contacted this service.

Our investigator asked Mr D why he'd waited till 31 July before reporting the disputed transactions, because he had logged onto his account on 22, 25, 27, 28 and 29 July. She also asked how anyone had been able to obtain Mr D's PIN.

Mr D didn't answer why he hadn't reported the disputed transactions earlier than 31 July. In reply to the second question, he said that his wallet had been stolen from his hotel room and the PIN was also in the wallet.

Our investigator didn't uphold Mr D's complaint. She said that Mr D had acted with gross negligence in keeping his PIN with his card, and in not reporting his card as stolen in a timely manner.

Mr D didn't agree. He said he'd been a victim of theft and fraud. He said he didn't realise his wallet had been stolen until towards the end of his holiday. He said the investigator's decision had sided with the bank as the bigger party. He asked for an ombudsman's 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, and these determine the outcome of Mr D's complaint. The relevant regulations here are the Payment Services Regulations

2017. 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. There are also other provisions within these regulations which are relevant to Mr D's case, which I'll set out below.

Section 72 says:

"72.—(1) A payment service user to whom a payment instrument has been issued must—

...

(b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

...

(3) The payment service user must take all reasonable steps to keep safe personalised security credentials relating to a payment instrument or an account information service."

Mr D notified Barclays on 31 July. The first disputed transaction had taken place on 22 July. And Mr D had logged into his account on 22, 25, 27, 28 and 29 July. So he would have known about the disputed transactions on 22 July. As he failed to notify Barclays promptly, the other transactions took place. These couldn't have happened if Mr D had notified Barclays without undue delay.

Mr D told our investigator that he didn't know his wallet had been stolen until near the end of his holiday. He hasn't said which date that was, but I find it improbable that he wouldn't have needed to use anything in his wallet for almost the whole of a holiday abroad. He's also said that he complained to the hotel, but there is no evidence to show when he did this, or that he contacted the local police. But even if he didn't know his wallet had been stolen, he logged onto his account on the day of the first disputed transaction, and multiple occasions afterwards, so he must have known about them. So I consider he failed to notify Barclays about the theft without due delay. This was in breach of section 72 (1) (b) which I've quoted above.

Mr D also said that he kept his PIN with his card. By doing so, he failed to *"take all reasonable steps to keep safe his personalised security credentials"* as required by section 72 (3) of the regulations.

The regulations also say

"77.

...

(3) The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer—

(a) has acted fraudulently; or

(b) has with intent or gross negligence failed to comply with regulation 72 (obligations of the payment service user in relation to payment instruments and personalised security credentials)."

The regulations don't define "gross negligence", but there has been advice from the regulator, the Financial Conduct Authority (FCA), and there have also been legal cases. Having considered . I've considered whether Mr D's failure to keep his details secure was gross negligence, and I find that it was.

This means that under the Payment Services Regulations, Barclays doesn't have to refund Mr D.

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 D to accept or reject my decision before 12 March 2024.

Belinda Knight
Ombudsman