

## **The complaint**

Mr H has complained that Barclays Bank PLC (trading as Barclaycard) won't refund him for transactions he didn't make or authorise. He's also unhappy that Barclays asked him for information and closed his account.

## **What happened**

Mr H had a Barclaycard account, with a credit limit of £4,000.

Mr H says that ATM transactions totalling £500 and other transactions were carried out on his account without his consent on 10 November 2021.

I won't be listing the disputed transactions as both parties are aware of which transactions are in dispute.

On 10 November 2021, Mr H called Barclays and told the bank that he'd lost his Barclaycard and hadn't made two cash withdrawals and some other transactions. Following this Barclays wrote to Mr H in December 2021, asking him to complete a fraud form and provide more information about the transactions he was disputing. Mr H said he wasn't happy to provide the information and thought Barclays were asking him for too much. So, Barclays didn't carry out a fraud investigation and said it wasn't able to refund the transactions. Following this it also closed Mr H's account.

Mr H wasn't happy with this and complained to Barclays. In response Barclays said that in order for them to investigate Mr H's fraud claim he needed to provide the information it had previously requested from him. So, it maintained its position regarding not refunding Mr H the disputed transactions. It also said that it had closed Mr H's account in line with the terms and conditions.

Mr H disagreed with Barclays's decision. He wants the bank to refund the transactions. So, he brought his complaint to our service where one of our investigators looked into the matter.

The investigator asked Mr H questions about how the transactions had been made and who had access to his card and PIN. Mr H said he didn't remember much as at the time the transactions were made, he was drunk. He said he may have dropped his card in a shop or at a hotel. He explained that he was celebrating his birthday with a female friend. But couldn't provide any more information about how someone else would've known his PIN, which was needed to carry out the transactions.

The investigator reviewed everything and didn't recommend Barclays should refund Mr H the transactions he was disputing. She didn't think he could adequately account for how the transactions could have been made without his consent. She also said that Barclays had acted fairly when it had closed Mr H's account.

Barclays agreed. Mr H disagreed. He maintains he never made the cash withdrawals and said that he always used a different card so as not to incur fees when taking out cash via a credit card. So, he said Barclays should refund him.

As Mr H didn't agree, the matter has come to me to decide.

### **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.

I appreciate Mr H was disappointed by the investigator's opinion and I can see that he has provided a detailed response to what he said about his complaint. I'd like to reassure Mr H that I've considered the whole file and what's he's said. But I'll concentrate my comments on what I think is relevant. So, I won't be addressing every point in detail which Mr H has raised in his submissions. My findings will focus on what I consider to be the central issues. If I don't mention any specific point, it's not because I failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair outcome.

There are regulations which govern disputed transactions. Generally speaking, if the evidence suggests it's more likely than not that Mr H authorised the payments, Barclays is entitled to hold him liable for the disputed transactions. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017).

The basic position is that Barclays can hold Mr H liable for the disputed transactions if the evidence suggests it's more likely than not that Mr H made them or authorised them. The PSR's 2017 also say that someone acting as an agent on behalf of Mr H can be treated as acting with apparent authority when making transactions on his account. And that the person to whom the card has been issued must notify the firm which provided the card if they become aware of its unauthorised use. This must be without undue delay.

The PSRs 2017 say a payment transaction is regarded as authorised if the payer has given consent to the execution of the payment transaction. If a payment service user (customer) denied having authorised an executed payment – the payment service provider (in this case Barclays) has to prove the payment transaction was authenticated. And if it is deemed that a payment transaction hasn't been consented to, it isn't authorised. PSR 2017 goes on to say a payment service provider is required to refund the amount of an unauthorised transaction to the payer.

Mr H says he didn't carry out the cash withdrawals – in other words he didn't consent to or authorise the payments. And is seeking a refund of these (and other) payments made from his account. Barclays say it hasn't been provided with any evidence that suggests the transactions were made by anyone other than Mr H, and he is therefore liable for them. So, I need to think about whether the evidence I have suggests the payments were authenticated and whether it is more likely than not Mr H, or somebody with his knowledge or authority, carried out the transactions Mr H is now disputing.

For each transaction Barclays has been able to provide evidence to show the payments were appropriately authenticated using Mr H's bank card and PIN. But that's not enough to hold Mr H liable. I also need to consider whether the evidence suggests he consented to the transactions. Or whether he is the victim of fraud as he's alleged.

Having looked at all the evidence and considered Mr H's explanation carefully I'm afraid I'm not persuaded by what Mr H has said. I can't say for sure who was making the cash withdrawals. But on balance I've ruled out that a third-party fraudster was responsible. I've considered what the PSRs say about apparent authority too and I'm satisfied that Mr H did consent to the transactions he is disputing. So, I don't think it would be fair or reasonable to say Barclays needs to refund him. I say this for the following reasons:

- Mr H's genuine card and PIN were used to make the disputed transactions.
- I'm satisfied first that whoever made the disputed transactions was able to do so because they had both Mr H's card and knew his PIN. Mr H has suggested that he lost his card in either a shop or hotel – but he hasn't provided any other information about this. So, I have very little information to go on from Mr H.
- Despite being asked by the investigator and Barclays Mr H hasn't explained how someone else was able to become aware of his PIN, which was needed to make the disputed cash withdrawals in November 2021. So, I don't have the evidence I would reasonably expect from Mr H to support his explanation that he never consented to the disputed transactions.
- It strikes me as unusual that, if a fraudster had extensive access to Mr H's Barclaycard account, needed to account for this disputed activity, that a limited number of transactions were made. Usually, a fraudster would try and maximise the usage of the account to get the greatest benefit from the account before the account holder notices their funds are missing and the card is cancelled. But this didn't happen. Here the disputed payments made only used a fraction of Mr H's credit limit.
- I've also kept in mind that no further transactions were made or attempted *after* Mr H reported the fraud, which again is unusual for fraudulent activity and suggests to me that whoever was using the card knew it had been reported as lost and cancelled – from the evidence I've seen the only person aware of this information was Mr H.
- It's also significant in my view that Mr H reported the transactions *after* the last disputed transaction was made.
- After Mr H called Barclays to tell them about the transactions, Barclays wrote to him asking him to complete some fraud investigation forms so that it could carry out an investigation into Mr H's fraud claim. Mr H says Barclays asked him for too much information, so he never completed the forms. But I don't find Barclays request unreasonable and having looked at the forms Barclays asked Mr H to complete, I can see that the information it was asking Mr H to provide was in line with what most banks would request when completing a fraud investigation – without the information Barclays couldn't investigate Mr H's fraud claim properly.

When the facts are unclear or in dispute, I must make my decision based on what I think is more likely than not to have happened. One factor I need to consider is the credibility and persuasiveness of Mr H's explanation about what happened, when weighed against the other evidence I have seen. I've also had to consider that Mr H hasn't actually provided this service or Barclays with much information at all about how the transactions he made could have been made without his consent.

When I weigh everything up, in my view the most likely explanation here is that Mr H either

made the transactions himself or allowed someone else to make them, using his card and PIN. I say this because I've not received a satisfactory explanation from Mr H for how an unauthorised person would have been able to make these transactions. So, in the circumstances I think Barclays has sufficient grounds to hold Mr H liable for the transactions and I won't be asking them to refund Mr H.

I then turn to Barclays's decision to close Mr H's account. It's generally for financial businesses to decide whether or not they want to provide, or to continue to provide, banking facilities to any particular customer. Unless there's a very good reason to do so, this service won't usually say that they must keep a customer or compensate a customer who has had their account closed. Having looked at all the evidence, I'm satisfied that Barclays acted in line with the account terms when it decided to close Mr H's account. So, I can't say it treated Mr H unfairly.

### **My final decision**

For the reasons I've explained, 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 H to accept or reject my decision before 26 February 2024.

Sharon Kerrison  
**Ombudsman**