

The complaint

Mr K complains that Barclays Bank UK PLC failed to refund transactions he didn't recognise.

What happened

Mr K says he first noticed a problem with his account when he received an alert from Barclays concerning various payments made from his account to a crypto currency merchant I'll refer to as C.

Mr K called Barclays and discussed the payments. There were five attempts in total. Three payments had successfully gone through the account (one of these was temporarily put into a fraud suspense account) and two others had been automatically declined. Mr K denied having anything to do with the payments and asked for a refund.

The payment in the fraud suspense account was eventually released, making the disputed transactions now over £1,000. Mr K was given a temporary refund of one of the payments (£514.95) whilst Barclays investigated the issue.

During the investigation, Mr K confirmed he hadn't given anyone access to his phone or card details, nor had he been asked to make the payments by a third party or used any suspicious links sent to him electronically.

Barclays ruled out that Mr K was the victim of a scam and looked at the details of the transactions. These showed that the payments were made via an online service and used Mr K's card details entered into C's website. Part of the payment process was an additional layer of security requiring the receipt of a One Time Passcode (OTP) that was sent to the registered phone on Mr K's account. The OTP was successfully entered into the payment process which then confirmed the payment(s) from Mr K's card.

Barclays noted that Mr K had been using his Barclays Mobile Banking (BMB) service which is a banking app loaded onto Mr K's phone shortly after the disputed transactions had been made from his account. The same IP address was used in the disputed transaction and the BMB activity.

Note: IP addresses are a means to identify physical locations that online transactions are connected to and can be the actual physical location or other locations connected to the provider of the data services.

Based on the evidence Barclays had assessed, they thought Mr K was responsible for the payments himself. The temporary credit that had been earlier applied to Mr K's account had already been transferred by him to a different account, leaving less than £1 in the account. Barclays took the credit back creating a negative balance. It was at this time that the delayed payment was cleared and applied to Mr K's account, creating further debt on the account.

Mr K complained about Barclay's decision and advised them at the time of the disputed transactions he was at work and hadn't received any OTP. Barclays reinvestigated the

situation but didn't change their position regarding their decision to hold him liable for the disputed transactions.

Mr K remained unhappy with how Barclays handled his issue and brought his complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the matter and asked both parties for information about the situation.

Mr K was able to confirm his version of events that he'd told Barclays. He continued to deny being responsible for these transactions. He thought that because Barclays had initially flagged the transactions as suspicious, it was evident that Mr K himself wasn't responsible for them.

He was also able to confirm that no one else had access to his account cards and they weren't shared with anyone else. Mr K later confirmed he'd notified the authorities about the loss of his funds.

Barclays provided evidence of the audit data linked to the disputed transactions. This included IP address data used to confirm the OTP received by Mr K's phone and login data for the BMB.

Barclays evidence showed it was the registered mobile phone for Mr K's account that was sent the OTP (the same number registered with our service by Mr K).

After reviewing the evidence, the investigator didn't uphold Mr K's complaint, commenting that:

- There was no evidence to show a compromise of the phone used by Mr K to receive the OTPs.
- There was no evidence to suggest how anyone else could have obtained the card details known only to Mr K.
- Matching IP address data for non-disputed activity.
- Mr K said he was unaware of the disputed transactions prior to Barclay's message, but evidence shows he logged into his BMB after the disputed payments were taken (but before Barclays called him). It's likely he would have seen the drop in balance as it was about 50% of the funds available to him at the time.

Mr K disagreed with the investigator's outcome and said he hadn't received the OTP. He wanted a further review of his complaint which has now been passed to me for a 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Barclays can hold Mr K liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Barclays can only refuse to refund unauthorised payments if it can prove Mr K authorised the transaction(s), but Barclays cannot say that the use of the card for online payment details conclusively proves that the payments were authorised.

Unless Barclays can show that consent has been given, it has no authority to make the payment or to debit Mr K's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr K. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr K responsible for the disputed transaction(s) or not.

To recap, Mr K denies having anything to do with the transactions he's disputed, whilst it's Barclays case that he was responsible. So, in order to come to a fair and reasonable decision, I have to objectively assess the available evidence and make a decision based on the balance of probabilities – in other words, on what I consider is most likely to have happened.

Mr K has told us he was at work at the time of the disputed transactions and had his phone with him (because he said he first realised there was a problem when he got a message via his phone from Barclays). Barclays records show they held one current phone number for Mr K, being the same one he registered with our service. Their records also show that the OTP was sent to that phone and a response received (which released the payments to C). From this I'd conclude that same phone was used to both receive the OTP and receive Barclays message.

The OTP and Mr K's use of his BMB were also from the same IP address. Mr K used his BMB shortly after the disputed transactions, about 40 minutes after the disputed transactions had finished and about an hour before his card was cancelled by Barclays. There are indications that Mr K used his BMB and could well have seen the disputed transactions, but he says the first he knew about them was when Barclays messaged him.

In order to carry out these transactions, it would require knowledge of Mr K's card details, including the three-digit security number. It would also require access to Mr K's genuine phone registered to his Barclays account (and the ability to open the phone to respond to the OTPs). Also, access to the BMB requires a separate set of security information, again known only to Mr K.

I also thought it was noteworthy that Mr K transferred the temporary refund he received from Barclays out of his account (along with the rest of his available balance – apart from 0.78pence), effectively removing it from Barclays ability to easily recover it. At the time, Mr K had funds enough to cover the disputed transactions.

Without a realistic or plausible explanation that answers these points, I can't see how it was likely anyone else other than Mr K that made these payments. While I'm sure Mr K will disagree with me, the evidence that I've considered leads me to the conclusion that, on the balance of probabilities, it was more likely than not that Mr K authorised or allowed his card details to be used to make the payments. So, taking everything into account, I think it is fair and reasonable for Barclays to hold Mr K responsible for both transactions.

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 K to accept or reject my decision before 1 March 2024.

David Perry
Ombudsman