

The complaint

Mr A complained because Barclays Bank UK PLC, trading as Barclaycard, refused to refund him for transactions he said he didn't make.

What happened

On 2 January 2023, three transactions were made using Mr A's Barclaycard. Two were to a retailer, paid in person at the point of sale, for £4,947.98 and £4,568.63. The third was a cash machine withdrawal for £250.00.

Barclays sent a text to Mr A about these transactions, and Mr A then contacted Barclays to say that he hadn't authorised any of these. He said that he'd lost his card, but he didn't know when or where. He said he'd last used it on 30 December. He said he kept the card in his phone wallet, which he hadn't lost, but it was possible the card had fallen out. He also said that no-one else knew his PIN for the card, and he hadn't written it down.

Barclays asked Mr A to complete and return a fraud declaration form. Mr A returned the form. On this, he changed what he'd told Barclays, and said that his card had been retained in a cash machine. He said he'd used that on the day of the disputed transactions on 2 January, before the time of the disputed transactions.

Barclays investigated. It didn't agree to refund Mr A, who complained. In Barclays' final response to Mr A's complaint, it said that its specialist fraud team had done a thorough investigation and had decided to hold him liable. Barclays also told Mr A that it had decided to close his account, and he would be liable for the full outstanding balance on the account which was then £9,969.66.

Mr A didn't agree and contacted this service.

Our investigator didn't uphold Mr A's complaint. He said that for all three transactions, the genuine card had been used and the correct PIN had been entered. He said that there was no evidence to show that Mr A's card had been retained in a cash machine just before the disputed transactions. And Mr A had originally said he'd lost the card, not that it had been retained by a cash machine.

Mr A wasn't satisfied. He sent several long and detailed emails. In summary, he said:

- He wanted to know why Barclays had allowed the payments to go through when he'd contacted the bank to say he hadn't authorised them. He said he wanted to know the legal grounds on which Barclays had released the payments. They'd originally appeared as "pending" and only debited his account several days later;
- He hadn't seen anyone approach the cash machine which had retained his card, so it couldn't be right that he or anyone else had used the genuine card and PIN because the card was inside the machine;
- He wanted to know what happened to the card, and Barclays should contact the cash machine company to co-operate and the cash machine firm should be liable;

- He asked if Barclays had contacted the recipient of the two payments, and said that if the named organisation were a retailer, it wasn't likely that anyone would buy that amount of goods at one time. Mr A wanted to see Barclays' investigation of the recipient organisation;
- Mr A said that he had categorically said the cash machine had retained his card. So the card used must have been copied or cloned. He disagreed with what the investigator had said that card chips had never been known to have been cloned, and said this didn't mean chips can't be cloned;
- He said this service's job should include investigating the cash machine record. He wanted evidence that the cash machine hadn't retained his card;
- In regard to changing his evidence, Mr A said that he might have initially said he'd lost his card because he was in a panic. He said he'd then said it was lost in the machine;
- He wanted the transaction receipts from the recipient of the money and from the cash machine where the £250 had been withdrawn.

Mr A 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.

As I've set out above, Mr A has raised multiple points in his submissions to the service. I've understood all of those and considered all he's said and sent us, but in reaching my decision I've focused on what I think is vital to my conclusions.

There are regulations which govern disputed transactions. 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. So I've considered whether it's more likely than not that Mr A, or someone else, authorised the three disputed transactions.

First, Mr A's evidence changed over time. He initially told Barclays that he'd lost his card, and that he hadn't used his card since 20 December. Then, when he came to complete the fraud declaration form, he said he'd used it in a cash machine on 2 January and at that point it had been retained by the cash machine. When our investigator asked Mr A about this, Mr A said he'd been in a panic. I recognise that such situations are stressful. But I'm not persuaded that this explains two very different versions of his evidence about the facts.

Computer evidence shows that the three transactions were carried out using Mr A's genuine card. Chip technology is complex and sophisticated and there have been no known instances where the chip in a card has been successfully copied. Cloning only takes a sort of photo of the card, and doesn't replicate the chip. Here, Mr A's card was physically presented for all three transactions, because the computer records show that the genuine chip was read.

Also, Mr A's correct PIN was used. He told Barclays he hadn't written down or recorded his PIN. So there is no clear way in which any third party could have known Mr A's PIN. There are 10,000 possible combinations of a four-digit PIN. So it's most unlikely any fraudster could have guessed this correctly without any failed attempts. There are also no records of Mr A's card being retained in a cash machine.

Computer records also show that Mr A was accessing his Barclays mobile banking app throughout the period of the disputed transactions, having logged on before they started

using his security credentials and on his registered mobile. But he told Barclays that he was alerted to the transactions through Barclays' text message to him.

I find that all this evidence indicates that it was more likely than not that it was Mr A who carried out the three disputed transactions. His evidence has been inconsistent; the genuine card and correct PIN were used and there is no logical way in which either could have been obtained by a third party unknown to Mr A; and Mr A was logged onto his mobile banking throughout.

Mr A hasn't raised this in his complaint to us, but I see that Barclays decided to close Mr A's account. For completeness, I confirm that Barclays was entitled to do this under the terms and conditions of Mr A's account.

Finally, I'll address some points from Mr A's specific responses to the investigator's view.

Pending payments are ones which haven't yet been processed through the banking computer systems. But this doesn't mean they can be stopped, just that they don't yet show.

What matters to the outcome here is whether or not Mr A authorised the disputed transactions. This is what Barclays considered, and what I've considered in detail above. It's not relevant to the outcome what goods were bought from the recipient organisation. Nor does Barclays have to provide Mr A with copies of the receipts for those goods, or from a cash machine, or the other information which Mr A said should be provided to him.

As I've found that it's more likely than not that Mr A carried out the disputed transactions himself, I don't require Barclays to refund him. Barclays was also therefore entitled to require Mr A to pay the outstanding balance on his Barclaycard when it closed his account.

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 A to accept or reject my decision before 4 March 2024.

Belinda Knight
Ombudsman