

The complaint

Mr and Ms T complain that Barclays Bank UK PLC ("Barclays") won't refund payments of over £12,000 made from their account in January 2023 that they say were unauthorised.

Mr and Ms T hold a joint account with Barclays, but for ease of reference, I will refer mainly to Mr T throughout this decision as the main complainant.

What happened

Mr T was on a business trip in Romania in January 2023. He went out for dinner and then on to a gentleman's club with one of his colleagues. He said that, while at the club, he remembers authorising one payment for £163.82 via chip and PIN for a round of drinks. However, he does not remember what happened after that, as he believes he was drugged and he blacked out.

The following day, Mr T woke up in his hotel and saw a text message from Barclays about a declined payment of £1,500 which he didn't recognise. He logged into his mobile banking app and discovered that multiple transactions had been made in the club using his Barclays debit card, which he says he didn't authorise:

Date	Amount	Merchant	Authentication method
13/01/2023	£937.82	Missevy Fabulosekid	Chip and PIN
13/01/2023	£1,500.51	Missevy Fabulosekid	Declined
13/01/2023	£2,801.98	Missevy Fabulosekid	Chip and PIN
14/01/2023	£3,753.91	Missevy Fabulosekid	Chip and PIN
14/01/2023	£3,753.91	Missevy Fabulosekid	Chip and PIN
14/01/2023	£934	MissevyFabulosekid	Chip and PIN

Mr T reported the unauthorised transactions to Barclays and said he couldn't have made them as he had been drugged and was asleep at the time they were made. He showed records of his smart watch that recorded him falling asleep at 9:43PM on 13 January 2023 and waking up at 7:43AM on 14 January 2023.

Barclays said it wouldn't refund the disputed payments as it said they had been authorised

by chip and PIN, such that they couldn't have been made by anyone other than Mr T if he hadn't shared his card or PIN with anyone else. Unhappy with this, Mr T referred the matter to our service.

Our investigator didn't uphold the complaint. She couldn't establish any point of compromise that would've allowed a third party to come into possession of Mr T's card or PIN. And given he couldn't remember what happened during the evening, she thought the most likely explanation was that Mr T had authorised the payments. Mr T disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided not to uphold it for the following reasons.

The disputed transactions complained about took place in January 2023, so of particular relevance to my decision are the Payment Services Regulations 2017 (PSRs) – which apply to transactions like the one made from Mr T's account.

The PSRs say that a payment transaction is authorised by the payer where they have given their consent to the execution of the payment transaction. Such consent must be given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

Unless the payment service provider can show consent has been given, it has no authority to make a payment or debit the customer's account. Where a payment service user denies having authorised a payment transaction, it is for the payment service provider to prove that the payment transaction in question was authorised by the customer.

Having considered the facts before me as well as the relevant law, it seems to me that the key question I need to determine here is whether it is more likely than not that Mr T authorised the transactions. In other words, I need to decide whether Mr T made the transactions himself or gave someone permission to do so. This is important because a customer will usually be liable for payments they've authorised and, generally speaking, a bank will be liable for any unauthorised payments.

In this instance, all the disputed transactions were authorised by chip and PIN using the physical payment card. And having considered the evidence, I'm satisfied the more likely explanation is that Mr T authorised the transactions, albeit I accept he may not remember doing so. I'll explain why.

First, Mr T said he did not give his card to anyone and took care to protect his PIN while making the initial payment in the club. He also said that he hadn't shared his PIN or mobile device with anyone else. So there's seemingly no way anyone else could have plausibly made the payments while he was asleep.

Mr T has put forwards various theories about how someone might have been able to obtain his PIN and make the payments while he was asleep, but there's no persuasive evidence to support any of this. He thinks that the card may have been stolen from him during the night and then later replaced in his possession. But Mr T said he woke up in his hotel room. So, if he was asleep between the hours of 9:43PM and 7:43AM, that would entail a third party somehow gaining access to Mr T's hotel room to put his card back in his wallet following the

last transaction at around 2:00AM, which doesn't seem plausible. It wouldn't be typical of a fraudster to go to such lengths to return a payment card after they'd already made payments from the card, and Mr T also said he doesn't remember anyone taking his card either.

Mr T has provided evidence from his Fitbit that suggests he was asleep by 9:43PM on 13 January 2023. But the first transaction of £163.82 that he authorised did not take place until 9:49PM, which is *after* he was meant to have been asleep. So, I'm not persuaded the sleep data recorded by his watch can be relied upon as evidence to demonstrate that he can't have made the transactions, as it does not correlate with any of the other evidence. It also doesn't explain how Mr T made it back to his hotel room (where he woke up) from the club if his watch shows him as being asleep the whole time.

Even if Mr T *was* asleep at the relevant time, given that the payer had his card and knew his PIN, I can't rule out that he might have disclosed this and given authority to someone else to make payments, which he might not be able to remember. Indeed, I note he said he went to the club with other people. And it would still mean the transactions would be considered as 'authorised' by Mr T if he'd given consent for someone else to use his card, even if that person then went on to make further payments that he *didn't* consent to.

It seems that Mr T also received and responded to a text message from Barclays asking whether he'd made a payment of £1,500.51, which was received a couple of hours after he'd made the first payment in the club. Mr T said he didn't see any text messages from Barclays at the time of the payments and said it was only the next morning he saw them. But again, given the intoxicated or drugged state he said he was in at the time and how little he remembers, it seems highly unlikely that he would remember receiving or responding to the text message from Barclays. Mr T hasn't said that his device was stolen, and he had it the next day when he discovered the transactions and text message. So, the most plausible explanation here is that he responded to Barclays at the time to confirm he had made the payment, and then went on to make further payments.

Mr T says it can't be proved that the text was received at the time the transactions were being made and has said it's common for text messages to be delayed or even not received at all. But it's clear that Mr T did receive the message as he saw it the next day, and his phone is showing the message as having been received at 10:54PM. And I have to take into account that the vast majority of text messages are sent and received almost instantaneously. Messages that are delayed or simply not received would be the rare exception, and there's little to indicate that this was what happened here.

So, given Mr T doesn't recall sharing his card, PIN or mobile phone with anyone else, the only plausible conclusion is that either Mr T made the transactions himself, or gave his card to somebody else with his PIN, thereby giving his consent and authority for payments to be made on his behalf. I appreciate that Mr T disputes this, but given no one else had access to his card, security details or mobile phone, there is no other more plausible explanation for how the payments could have otherwise been made. I also can't rule out that Mr T simply can't remember authorising them.

As a result, I'm not persuaded Barclays has acted unreasonably here by failing to treat the transactions as unauthorised.

Mr T further says that Barclays should have stopped the payments due to the irregular activity on the account. However, I can see that Barclays did decline the payment of £1,500.51 due to fraud concerns, which was why it sent a message to Mr T's registered device at 10:54PM asking whether he had made the payment, to which he responded 'Y' (yes).

This was seemingly why he was then able to go on and make further transactions, as the bank was satisfied it was Mr T who was making them. Indeed, he was informed of this after he responded to the bank, when it sent another text saying “*Great, you can keep using your card as normal. If any payments were declined, you can now make them again*”. Mr T has said that he responded ‘Y’ to say that he had authorised some of the transactions listed in the text message, but that the £1,500 payment should be declined. However, the text message said “*if you made **ALL** the payments above, please reply Y*” (my emphasis added). There was nothing asking him if it was correct for the £1,500 payment to be declined, and it clearly asked him to confirm whether he had *made* the payments, which he confirmed he had.

As such, I’m not persuaded Barclays ought to have done anything more here, as there was little else to suggest that he was falling victim to any sort of scam given he’d confirmed he was making payments to the payee “Missevy Fabulosekid”.

I appreciate this will likely come as a disappointment to Mr and Ms T, but I’m not persuaded it would be fair and reasonable to ask Barclays to refund the disputed payments in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Ms T to accept or reject my decision before 26 February 2024.

Jack Ferris
Ombudsman