

The complaint

Mr A complains that Barclays Bank UK PLC trading as Barclaycard is holding him liable for transactions he says he didn't authorise.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, transactions totalling £1,800.80 were charged to Mr A's Barclays credit card in August 2019 which Mr A says he didn't authorise. Mr A and Barclays have been unable to reach agreement about things, so Mr A referred his complaint about Barclays to us. Our Investigator was unable to resolve the matter informally, so the case has been passed to me for a decision.

I sent Mr A and Barclays my provisional decision on 5 December 2023 explaining why I was minded to uphold this complaint and what I was minded to direct. Both parties have had fair opportunity to respond, and I'm now ready to explain my final 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.

Having done so, I've reached materially the same conclusions as in my provisional decision and for the same reasons. I'll explain why.

The Payment Services Regulations 2017 and the Consumer Credit Act 1974 are relevant here. In short, banks will generally be liable for unauthorised payments; and a payment out of someone's account can only be authorised if the payer consented to it. So, it's not enough for Barclays to show how the disputed transactions were *authenticated*. To decide that Mr A authorised the transactions, I'd also need to be persuaded that Mr A most likely *consented* to the transactions.

In this case, information I've seen from Barclays suggests there are 13 disputed transactions totalling £1,800.80 as follows:

- Five ATM withdrawals each between £100 and £500 instructed between 3 and 6 August 2019.
- Five accompanying cash advance fees.
- Three further transactions instructed on 6 August 2019 at two stores and a bar.

I understand Barclays has explained these were chip and PIN transactions, which I have no reason to doubt. In other words, whoever made the transactions used a genuine credit card for Mr A's account and the correct accompanying PIN. So, I'm satisfied this is most likely how these transactions were *authenticated*.

However – and whilst I acknowledge this is a very finely balanced case – I'm not sufficiently persuaded that Mr A most likely *consented* to these transactions. I say this because:

- Mr A has said he was out of the country from 5 to 9 August 2019. He's shown a Ryanair booking supporting this. I think this is most likely accurate. And whilst not all the disputed transactions (made in the UK) were instructed when Mr A was away, some of them were.
- This doesn't automatically mean, of course, that Mr A couldn't have authorised the transactions himself or consented to someone else doing so, just because he was out of the UK when some of them were instructed *in* the UK. However, Mr A has said he *didn't* authorise the transactions and I'm inclined to believe him. It seems the only other options are either that Mr A isn't being truthful (which strikes me as unlikely) or Mr A has somehow forgotten he consented to a friend or colleague making the transactions. But Mr A reported the disputed transactions promptly in 2019. And given the general situation and as explained below, I think it's more likely that something else has happened in this particular case as follows.
- I understand as part of a rollout to update its customers' cards to new requirements, in June 2019 Barclays sent Mr A a new credit card for his account. This was sent to Mr A's address, which I understand is a farm with around 15 people in the office complex. Mr A has explained he never saw or took possession of this new card. And I think it's plausible here that it was instead intercepted or otherwise discovered at the premises. Our Investigator explained that the only transactions showing on the August 2019 statement with the new card number are the ones Mr A has disputed which is consistent with this.
- The question remains how the interceptor or discoverer could have known Mr A's PIN, which Mr A has said he neither wrote down nor knowingly disclosed to anyone. However, I understand Mr A has used the same PIN for some time and for different cards. It would not be implausible for an interceptor or discoverer to have observed Mr A's PIN in interaction(s) with him potentially over quite some time. I'm not suggesting this is *definitely* what happened because I don't know. But from all the information I've seen, I think it's the most likely explanation in this case.
- I've taken on board Barclays' points about Mr A not having since changed his address for banking matters, and fraud typically maximising withdrawals and spending unlike, it says, what happened here. But I don't think Mr A not having changed his address shows he's been untruthful. Furthermore, it's quite possible the fraud was more opportunistic in this case, so I don't find the nature, timing and pattern of the disputed transactions inconsistent with the possibility or likelihood they were unauthorised.
- I've thought very carefully about what Barclays has said in response to my provisional decision. Barclays thinks Mr A hasn't taken reasonable steps to ensure his card and PIN were secure. However, the concept of gross negligence doesn't apply where I'm satisfied these were unauthorised transactions using a credit card and where I'm satisfied whoever authenticated the transactions didn't have the card, nor authenticate the transactions, with Mr A's consent. Barclays has also said that Mr A acknowledging several people had access to his card and PIN, him *still* using the same address, and him not bringing this up with his colleagues, isn't indicative of fraud. But these points haven't changed my mind. Again, I acknowledge this is a finely balanced case. However, Mr A has said that he *did* raise the matter with his colleagues but that this shed no light. I also understand, in terms of delivery of post, Mr A may be relatively constrained in a practical sense – he's explained that despite having some accounts with third parties registered to his *home* address (not his work

address), the postman *still* ends up delivering these to his work address some 400 metres away on the farm complex due to the property layout on which I understand Mr A both lives and works. So, whilst the points Barclays has made about Mr A's address may be something Mr A should think about carefully, they haven't persuaded me in this case that Mr A has been inaccurate in his testimony, or that he did, despite what he says, consent to the disputed transactions.

- Barclays has questioned, if it were in the future to send a new card and PIN to the same address and if fraud was committed again, whether it would be held liable again. But that's not something that has happened as yet, and it wouldn't be appropriate for me to comment in this decision on this further. If it were to happen, it would be a separate matter to be dealt with if or when it happened.

So – whilst, as I've said, I acknowledge this is a very finely balanced case – I'm not sufficiently persuaded that Mr A most likely *consented* to these transactions. This means I think they should be treated as unauthorised. So, I've decided to uphold this complaint and to direct Barclays to refund the disputed transactions totalling £1,800.80. Given these transactions were applied to Mr A's credit card account as extra debt, Barclays should also compensate Mr A for any extra account interest and charges he's incurred as a result, and it should also pay Mr A interest calculated at 8% per year on any repayments Mr A made to pay off the extra debt of £1,800.80 from the date of the repayments to the date of settlement.

I also agree with the Investigator's recommendation that Barclays also pay Mr A £300 for distress and inconvenience. It seems clear Barclays hasn't dealt with this matter very well. Mr A had protracted communications about it. And I think Barclays has caused him unnecessary distress and inconvenience and that £300 compensation for this is a fair amount.

My final decision

For the reasons explained, I uphold this complaint and I direct Barclays Bank UK PLC trading as Barclaycard to:

- Refund Mr A the disputed transactions totalling £1,800.80.
- Compensate Mr A for any extra account interest and charges he's incurred as a result.
- Pay Mr A interest calculated at 8% simple per year on any repayments Mr A made to pay off the extra debt of £1,800.80 from the date of the repayments to the date of settlement (if Barclays deducts tax from this interest, it should provide Mr A with the appropriate tax deduction certificate).
- Pay Mr A £300 for distress and inconvenience.

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.

Neil Bridge
Ombudsman