

The complaint

R complains that Barclays Bank Plc is holding it liable for transactions it says it didn't authorise.

Mr A – sole director of R – brings the complaint on behalf of R.

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 £2,480.59 were charged to R's Barclays credit card in July 2019 which Mr A says weren't authorised. R and Barclays have been unable to reach agreement about things, so R referred its 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 R 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 are relevant here. In short, banks will generally be liable for unauthorised payments; and a payment out of an 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 R authorised the transactions, I'd also need to be persuaded that R most likely *consented* to the transactions.

In this case, information I've seen from Barclays suggests there are 11 disputed transactions totalling £2,480.59 as follows:

- Ten ATM withdrawals each between £100 and £300 instructed between 13 and 25 July 2019.
- One transaction for £10.59 on 14 August 2019 for lumber and building materials.

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 R'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 R most likely *consented* to these transactions. I say this because:

- Mr A has said he was out of the country for a week in July 2019. He's shown a Ryanair boarding pass showing a return flight from Rhodes to the UK on 18 July 2019. 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 R through Mr A couldn't have authorised the transactions itself or consented to someone else doing so, just because Mr A was out of the UK when some of them were instructed *in* the UK. However, R has said it *didn't* authorise the transactions and I'm inclined to believe it. 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 R consented to a friend or colleague making the transactions. But R 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 R a new credit card for its account. This was sent to R's address, which I understand is a farm with around 15 people in the office complex. R has explained it 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.
- The question remains how the interceptor or discoverer could have known R'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 the PIN in interaction(s) with Mr A 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 R not having since changed its address for banking matters, and fraud typically maximising withdrawals and spending unlike, it says, what happened here. But I don't think R not having changed its address shows it'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 R hasn't taken reasonable steps to ensure its card and PIN were secure. However, even if the concept of gross negligence were applied here, I've not seen sufficient evidence to persuade me R failed with such carelessness to protect its PIN to meet the threshold for this in this instance. Barclays has also said that Mr A acknowledging several people had access to the card and PIN (although Mr A disputes this), R *still* using the same address, and Mr A 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, R may be relatively constrained in a practical sense – Mr A'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 R's address may be something Mr A should think about carefully, they haven't persuaded me in this case that R has been inaccurate in its testimony, or that it did, despite what it 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 R most likely *consented* to these transactions. This means I think they should be treated as unauthorised. This is with the exception of the final transaction paid for lumber and building materials – I don't think that one should be included in the refund. So, I uphold this complaint in part (although in the main) and I direct Barclays to refund the disputed transactions totalling £2,470. Given these transactions were applied to R's credit card account as extra debt, Barclays should also compensate R for any extra account interest and charges it's incurred as a result, and it should also pay R interest calculated at 8% per year on any repayments R made to pay off the extra debt of £2,470 from the date of the repayments to the date of settlement.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Barclays Bank Plc to:

- Refund R the disputed transactions totalling £2,470.
- Compensate R for any extra account interest and charges it's incurred as a result.
- Pay R interest calculated at 8% simple per year on any repayments R made to pay off the extra debt of £2,470 from the date of the repayments to the date of settlement (if Barclays deducts tax from this interest, it should provide R with the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 4 March 2024.

Neil Bridge
Ombudsman