

The complaint

Mr D complains that Barclays Bank UK PLC is holding him responsible for transactions which he says he didn't authorise.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

On 28 October 2023 Mr D raised a disputed transaction claim with Barclays in relation to 21 cash withdrawals from several ATMs made between 14 August and 24 October 2023 totalling £3,140. In short, Barclays concluded that Mr D had either made the transactions himself, or they were carried out by a third party with his consent.

Unhappy with Barclays' response, Mr D referred his complaint to the Financial Ombudsman. One of our Investigators considered the complaint and didn't uphold it.

Mr D didn't accept our Investigator's findings, so the complaint has been passed to me to make a decision. Mr D thought he was being treated like a criminal. He said whilst he was unable to explain how the transactions had been made – he was adamant his debit card *'had been scammed'*. Mr D was also very concerned at the financial loss he'd suffered because of the dispute.

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 our Investigator, and for largely the same reasons. I'll explain why.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Barclays has acted reasonably in concluding Mr D authorised the disputed transactions.

Where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

In line with the Payment Services Regulations 2017 (PSRs), broadly speaking, Mr D isn't liable for payments he hasn't authorised, unless he failed with intent or gross negligence to comply with the terms of the account or keep his personalised security details safe. And Mr D is liable for payments he's authorised.

The PSRs explain that authorisation depends on whether the payment transaction was authenticated correctly and whether the consumer consented to it.

I've looked first at whether there is any evidence to suggest Mr D's debit card and PIN were in any way compromised. Mr D has said his debit card was in his possession, or locked in his car, throughout the period the withdrawals were made. And that nobody knows his PIN. So, on that basis, I'm not persuaded that Mr D's physical debit card was used fraudulently by a third party.

From Mr D's account of what's happened, he seems to be suggesting his debit card was in some way cloned – saying this possibly occurred whilst he was at a local coffee shop. And he believes that this then allowed his debit card details to be used to make the cash withdrawals. I've given this careful thought – but on looking at the technical evidence; and the wider surrounding circumstances, I think this scenario is unlikely. I'll explain why.

Firstly, Barclays has explained that Mr D's specific debit card had a chip capability which is used to ensure cards cannot be cloned or copied – and the technical evidence I've seen in this case supports that. The technical evidence also shows that the chip within Mr D's debit card was read during the disputed transactions, which Barclays has confirmed as authentication that the *genuine* debit card was used to make these transactions.

On considering this point, I've also looked at the circumstances of the withdrawals themselves. If Mr D's debit card had been cloned, then the aim of the fraudsters would likely be to maximise financial gain. And yet there were multiple days when no disputed activity was conducted; despite significant funds being available in Mr D's account. There's also no evidence of any attempts to empty the account – nor were there any large retail transactions or cashback attempts. This is contrary to what I'd expect to see in a case involving fraudulent activity.

I can also see five cash withdrawals on Mr D's account in the two months prior to the month in which the disputed transactions started. Those transactions were for similar amounts and followed a similar pattern to the disputed transactions – making the disputed transactions in line with normal account activity, and not an obvious indicator of fraud.

Also, I can't see *any* evidence of further chip and PIN use of Mr D's debit card *after* it had been cancelled. This is significant - as it suggests to me that *anyone* using a '*cloned*' version of Mr D's debit card knew it had been cancelled and was therefore no longer of benefit. But I don't believe there's any reasonable likelihood of a third-party fraudster, unknown to Mr D, being aware his debit card had been cancelled and so stopped using it.

On taking everything into account. it follows that in my judgement, on balance, it is more likely than not that either Mr D authorised the cash withdrawals by making them himself or authorised another to do so by providing them his consent. And so, I won't be asking Barclays to take any further action in this regard.

This is a difficult message for me to give as I know how strongly Mr D feels about this matter. But given the evidence I have and on the balance of probabilities, I'm unable to reasonably reach any other conclusion.

So, taking everything into account, I don't think Barclays needs to take any further action.

My final decision

For the reasons set out above, 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 D to accept or reject my decision **before 28 March 2024**.

Anna Jackson
Ombudsman