

## The complaint

Mr G complains that Barclays Bank UK PLC trading as Barclaycard ('Barclays') won't refund transactions he made under duress.

## What happened

In June 2023, Mr G attended a cricket match with a client, after which he went out for drinks.

Mr G believes that he was drugged and says he has little recollection of events that happened between 10pm on 29 June 2023 and 6am on 30 June 2023. But Mr G does remember being verbally and physically assaulted to input details into a card terminal and his phone.

During this time three card payments were made using his Barclaycard, as set out below.

Date	Details of transaction	Amount
30.6.2023	Card payment to A	£1,990
30.6.2023	Card payment to A	£2,590
30.6.2023	Card payment to A	£2,500

Two other cards that Mr G holds with two different banks were also used for transactions. Those banks reimbursed Mr G in full.

Mr G raised the disputed transactions with Barclays, but they held him liable and didn't refund him. Barclays say the payments were made with chip and PIN, that Mr G had the card in his possession and there is no evidence a cloned card was used.

Mr G wasn't happy with Barclays' response, so he raised a complaint and highlighted a number of concerns he had about Barclays' processes, their handling of his complaint, the closure of his Barclaycard and the outcome they'd reached.

Barclays considered the points Mr G had raised and upheld his complaint in part. Barclays say Mr G didn't receive the level of service he should've. Barclays say they incorrectly told him they couldn't find his Barclaycard account after it was closed, at one point resolved his complaint in error and didn't provide their response in a timely manner. But Barclays feel they acted fairly in holding Mr G liable for the transactions and in closing his Barclaycard account. In order to resolve his complaint, Barclays offered Mr G a goodwill gesture of £3,540.

Mr G wasn't happy with Barclays' response, so he brought a complaint to our service.

In order to resolve his complaint, Mr G would like:

- A full refund of the disputed transactions, in addition to the £3,540 that Barclays has offered.
- Repayment of interest charged on his Barclaycard account for the disputed transactions.

- Payment of interest on the money used to repay his Barclaycard.
- Compensation for the time it's taken him to deal with this matter.
- Compensation and an apology for the distress Barclays have caused.
- A detailed response to all the questions he asked Barclays.
- Reinstatement of his Barclaycard account.
- A statement on his credit file that the transactions were not repaid immediately, as a result of Barclays' error.
- Details of improvements made to Barclays' processes and confirmation they meet all FCA Principles.
- Barclays internal records to be updated and remove any suggestion he was party to the fraud.

An investigator looked into Mr G's complaint and upheld it in part. This is a summary of the investigator's findings:

- Barclays acted fairly in holding Mr G liable for the transactions.
- Barclays flagged the first payment Mr G made and sent a text to his registered device to check the transaction was genuine, which was appropriate intervention.
- The investigator didn't think Barclays should've flagged the second payment as suspicious, or intervened. However, even if they thought the third payment was suspicious and that Barclays should've intervened, the refund Mr G had already received was more than we would've recommended.
- The Consumer Duty doesn't apply to Mr G's payments as they were made prior to its introduction.
- Our service can't look into or make recommendations in relation to Barclays' processes and procedures and Mr G should refer those concerns to the Financial Conduct Authority (FCA) who are the regulator.
- Concerns Mr G has over the information provided as part of his DSAR to Barclays, should be referred to the Information Commissioner's Office (ICO).
- Barclays didn't act fairly in closing Mr G's Barclaycard account based on the terms and conditions of his account, so Barclays should reopen the account.
- Barclays didn't list all three transactions on the claim form they sent to Mr G, but there was space for him to add the additional transactions he wanted to be considered as part of his fraud claim.
- Mr G was likely given incorrect information that he shouldn't repay the disputed transactions, so if Mr G's credit file was negatively impacted it should be corrected.

The investigator recommended that Barclays reopen Mr G's Barclaycard account, pay Mr G £125 in compensation for the poor level of service and apologise for the errors it made. The investigator also highlighted that Barclays hasn't paid the goodwill gesture of £3,540 to Mr G yet.

Barclays disagreed with the investigator's opinion saying we can't require them to reopen Mr G's Barclaycard account as it was a commercial decision. But Barclays agreed to pay the compensation of £125 and the goodwill gesture, saying it needed Mr G's bank details in order to make the payment.

Mr G disagreed with the investigator's opinion and provided a substantive response. As part of this he raised the following points:

- He wasn't tricked into making the payments, he was forced to make them under duress. Any action he took was under duress and doesn't constitute consent.
- He was confused, vulnerable and afraid at the time and had no idea what the criminals would do if he refused to comply.

- Mr G referred to another case and the decision our service issued on that case.
- Barclays' systems should've identified all of the three payments as suspicious, if it didn't, their processes are not fit for purpose.
- As part of Barclays flagging the payments as suspicious, they should've called Mr G.
- While Consumer Duty wasn't in effect at the time of the payments, it's not acceptable for Barclays to treat one customer differently to another for the same circumstances based on the date of the incident.
- Barclays didn't act fairly in closing his Barclaycard account and their process for making a claim isn't in line with the FCA's principle around treating customers fairly.
- Mr G wants compensation for Barclays' breaches of FCA Principle 12.
- £25 compensation for closing his account isn't sufficient.
- Mr G disputes the £138.46 in interest that was charged on the disputed payments, saying it was charged unfairly and Barclays should refund at least 50%.
- The overall compensation the investigator recommended is inadequate.

As the case couldn't be resolved informally, it was passed to me to review.

### **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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened considering the available evidence.

I'm really sorry to hear about what Mr G experienced on 29 June, which I understand would've been extremely distressing for him.

I'd like to explain that I won't be addressing each individual point Mr G made in response to the investigator's opinion. But I would like to reassure Mr G that I have taken all of his points into consideration in reaching an answer on his case. I've focused my decision on what I consider to be the crux of the complaint and the reasoning behind the answer I've reached.

Mr G has referred to a decision our service issued on another case. But each case is considered on its individual merits, and I can't comment on another case that we've handled.

### **Can Barclays hold Mr G liable for the disputed transactions?**

In broad terms, the starting position in law is that Barclays are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations 2017 (PSR's). And, generally, Barclays can hold Mr G liable for the disputed transactions if the evidence suggests it's more likely than not that he made or authorised the transactions himself.

It's important to explain, that Mr G being coerced into making the payments or making them while under duress, doesn't usually mean the transactions are unauthorised.

There are two steps to authorisation: authentication and consent.

Barclays have provided evidence which shows the card transactions were completed using chip and PIN. That means Mr G's physical card was used for the transactions and the transactions were authenticated.

For the second step, I need to decide if I'm satisfied that Mr G consented to the transactions.

Mr G says he doesn't have a clear recollection of what happened between 10pm on 29 June 2023 and 6am on 30 June 2023. But he remembers being given a drink, which he believes was spiked with a drug, being forced to sniff a white powder, and being repeatedly slapped so he would make payments.

I have no doubt that Mr G made the payments he's disputing under duress, but based on his testimony, I'm satisfied that he was aware the payments were being made and more likely than not he authorised them himself.

Consent under the PSR's is an objective test and doesn't require Mr G to be fully aware of the details of the payment.

I'm really sorry to disappoint Mr G, but based on the evidence including his testimony, I'm satisfied that he has consented to the transactions. This means the transactions were authorised and Barclays can hold him liable for them.

Mr G has asked what he should've done in the circumstances, but I can't answer this question. I can only look at the rules and regulations and whether I can fairly hold Barclays liable for his loss.

#### Should Barclays have intervened when Mr G made the transactions?

I've also thought about whether Barclays could've prevented Mr G's loss when he made the transactions.

There is an obligation on Barclays to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect Barclays to intervene and attempt to prevent losses for the customer.

Barclays say the first transaction flagged with their system as suspicious, so they sent a text message to Mr G's registered device asking if the payment was genuine. They received a response that said it was genuine.

I'm satisfied that Barclays' intervention on the first transaction was appropriate. Based on the specifics of the transaction, I'm not persuaded the transaction warranted Barclays calling Mr G.

I wouldn't expect the second payment to have been flagged by Barclays as they already had confirmation the first payment was genuine, and the second payment was made to the same merchant. Also, Barclays has to strike a balance between identifying payments that could be fraudulent and then responding appropriately based on their concerns and ensuring minimal disruption to legitimate payments.

When Mr G made the third payment, I think it would've been appropriate for Barclays to have intervened again, based on the number of payments made in a reasonably short period of time, the total value of the transactions and the fact that transactions took Mr G close to the limit on his Barclaycard.

But, even if I say Barclays should've intervened and that intervention could've prevented the third payment, Barclays has already refunded more in making a goodwill gesture of £3,540

than I would've recommended based on the last transaction being for £2,500. So, I can't fairly ask Barclays to pay Mr G anything further in relation to the disputed transactions.

#### Barclays' processes and fraud detection system

Mr G has raised a number of concerns about Barclays' systems in relation to fraud detection and prevention being unfit for purpose. This doesn't fall within this service's remit. Any concerns about their processes and procedures should be referred to the FCA who are the regulator.

I can only look at whether Mr G was unfairly or unreasonably impacted by those processes. Barclays sent Mr G a form to complete in relation to his fraud claim by post. Mr G believes Barclays should've allowed this to be completed online. Barclays says that due to the value of the disputed transactions, the form had to be sent via post.

I don't think it was unreasonable for Barclays to send the form by post. I haven't seen anything that suggests Mr G was unable to complete and return the form, or that he made Barclays aware of any reasonable adjustments that might mean he was unable to use the post.

#### The closure of Mr G's Barclaycard account

Barclays says they closed Mr G's Barclaycard account in line with the terms and conditions of his account.

Having reviewed the terms and conditions that Barclays have relied on, I'm not satisfied they acted reasonably in closing his account without notice.

Barclays have relied on a term which comes into effect when the consumer is considered complicit in the fraud. However, Barclays haven't provided any evidence that this is the case and I'm not satisfied that the evidence we have supports that suggestion.

Also, in response to the investigator's view, Barclays refer to it being a commercial decision. I agree that Barclays can make a commercial decision on whether to discontinue a customer's facilities, but they have to act in line with the terms and conditions of the account and would usually be expected to give the consumer notice of the withdrawal of facilities.

In this case, I'm not satisfied that Barclays has acted fairly and in line with the terms and conditions, so I agree with the investigator that Barclays should reopen Mr G's Barclaycard account.

Mr G has also complained that Barclays charged £138.46 in interest on the disputed transactions, saying he was told not to repay the transactions and that interest wouldn't be charged.

From what I've seen, I think it's more likely than not that Barclays did incorrectly tell Mr G that he wouldn't be charged interest on these transactions. However, I'm not satisfied that I can fairly ask Barclays to refund this interest based on the goodwill gesture Barclays has already made. I say this as the £3,540 is significantly above what I would've recommended if I decided Barclay should refund the third transaction and this interest – which would come to £2,638.46.

I will cover the compensation award for Barclays unfairly closing Mr G's account later in this decision.

## The Consumer Duty and FCA Principle 12

The Consumer Duty (Principle 12 of the FCA's handbook) was introduced on 31 July 2023 and can't be applied retrospectively. I appreciate that Mr G may feel it's unfair that his case is considered differently than if his payments were made after the introduction of the Consumer Duty. But I'm required to take into account the law, regulator's rules, good industry practise and guidance relevant at the time he made his payments.

### Mr G's DSAR request

Mr G is unhappy with the information provided by Barclays as part of his DSAR, saying that not all call recordings have been provided. The subject of his DSAR doesn't fall within our remit and Mr G should contact the Information Commissioner's Office (ICO) if he's dissatisfied with the information Barclays have provided.

### Barclays' internal records and Mr G's credit file

Mr G wants Barclays to amend their internal notes by removing any reference that suggests that he might have been considered party to the fraud as part of their investigation.

These notes were added as part of Barclays' fraud investigation and Barclays have confirmed that what is recorded wouldn't impact Mr G banking with them in future. Barclays also say they haven't registered any markers in relation to fraud with the credit reference agencies.

Mr G hasn't provided anything that shows his credit report has been negatively impacted.

I'm not satisfied that I can fairly ask Barclays to change internal notes they have saved on their system, however if Mr G feels Barclays treats him unfairly in future, he is free to raise a complaint with them.

So, I can't fairly say Barclays have done anything wrong in relation to this concern.

### The level of customer service Mr G received

Mr G has complained about the time it took for Barclays to deal with his fraud claim and wants compensation for the time he's spent in bringing his complaint. Our service wouldn't award compensation for the time a consumer spends on raising a fraud claim or bringing a complaint to our service. However, I could make an award if I felt the level of customer service Mr G received from Barclays was poor in relation to any delays or incorrect information he was given.

Barclays accept they haven't given Mr G the level of customer service they should've. Barclays say they closed Mr G's complaint in error, told him that they couldn't find his closed Barclaycard account and didn't give him a timely answer on his fraud claim.

I'm also satisfied that Barclays acted unfairly in closing Mr G's Barclaycard and think this should be considered as part of Mr G's compensation award.

Having considered the errors Barclays accepts it made and the unfair closure of Mr G's Barclaycard, I think the £125 awarded by the investigator is fair.

Awards made by our service are modest, and I'm not satisfied that these errors had a serious impact on Mr G. It appears that Mr G had another bank card and credit card and there isn't any suggestion that being without his Barclaycard caused him financial difficulties.

I understand the distress that Mr G was caused by being the victim of this fraud, and the terrible circumstances he was subjected to by the person/s that drugged and assaulted him. But I can't make a compensation award against Barclays for the impact caused by those parties. I can only consider the errors Barclays has made and the impact from those individual errors. Especially as I agree that Barclays can fairly hold Mr G liable for the transactions.

#### In summary

I'm really sorry to disappoint Mr G, as he's lost a significant amount of money, and been the victim of a very violent and upsetting crime.

But I'm satisfied that the goodwill gesture of £3,540 that Barclays has offered is more than I would've recommended, even if I agreed they should've refunded the third transaction and the interest charged on the disputed transactions.

I also think the £125 compensation that was recommended by the investigator, is fair in the circumstances.

So, I can't fairly ask Barclays to refund Mr G anything further. But Barclays should now pay Mr G the redress award as follows and reinstate Mr G's Barclaycard account.

#### **Putting things right**

To put things right I require Barclays Bank UK PLC trading as Barclaycard to:

- Pay Mr G the goodwill gesture of £3,540
- Pay Mr G compensation of £125 (which is in addition to the goodwill gesture)
- Reinstate Mr G's Barclaycard account.

#### **My final decision**

My final decision is that I uphold this complaint against Barclays Bank UK PLC trading as Barclaycard and require them to compensate Mr G, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 December 2024.

Lisa Lowe  
**Ombudsman**