

The complaint

Mr L complains Barclays Bank UK PLC (“Barclays”) refuses to refund him for transactions on his account he says he didn’t authorise.

What happened

Mr L says his phone was stolen on 14 July 2023 near Hammersmith while he was waiting for a taxi. Mr L cancelled his phone later that day and called Barclays on 15 July 2023 to report unauthorised transactions on his account. The transactions are a mix of card transactions, ApplePay transactions, and a bank transfer. Mr L’s evidence is that he had his card on him when he complaint about the unauthorised transactions, but at various times that night the card had not always been in his possession. Mr L would like Barclays to refund all the disputed payments.

Barclays considered the evidence and decided to hold Mr L liable for these transactions. The first two were carried out using his genuine card and PIN, which Mr L reported as having in his possession after the theft. The last time Mr L had entered his PIN anywhere was six days prior to the events, and there was also no evidence of any incorrect PIN attempts. So, Barclays were not satisfied that Mr L’s card and PIN had been compromised, and it held him liable for all the disputed transactions.

Our investigator considered this complaint in its entirety and decided to uphold the complaint in part. The investigator was persuaded by the evidence provided by Mr L that his phone was stolen and used by a fraudster to make ApplePay transactions and the bank transfer. However, the investigator was not persuaded that Mr L’s card and PIN were also compromised on the same night, and so didn’t uphold the transactions which were made using his card & PIN. Barclays agreed to the outcome reached but Mr L didn’t, so the complaint has been passed to me for a 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.

A consumer should only be responsible for transactions made from their account that they’ve authorised themselves. Mr L said he didn’t give any permission for the transactions in dispute to be made but Barclays believes he did. My role then is to give my view on whether I think Mr L more likely than not authorised the transactions, based on the evidence I have available.

The transactions which were carried out using ApplePay and the bank transfer were all upheld by the investigator. Barclays agreed to this outcome, so as these transactions are no longer in dispute, I do not need to make a finding on these.

The transactions which remain in dispute are the card transactions which were made using Mr L’s chip & PIN. Upon bringing his complaint to Barclays, Mr L signed a declaration stating his card had not been out of his possession and he had not disclosed his PIN. There are

also notes on Mr L's fraud complaint stating he had his card throughout the night, and this had not been taken with his phone. But later Mr L said he didn't always have his card on him during the night and it had been used for various tabs. These inconsistencies make it hard to rely on what Mr L has said alone.

I've seen a copy of Mr L's bank statements and I can see that he used his card that night at a bar/restaurant. So, it's possible he had a tab at this venue, but there is no other evidence that supports what Mr L has said about not being in possession of his card all night and no evidence it was used at any other bars or restaurants. The last authorised transaction made at the bar/restaurant was at 23.17 on 13 July 2023. And having researched this venue it seems this establishment is open till midnight. The transactions in dispute were made at 04.43 and 05.57 on 14 July 2023, so I think it's unlikely to have been made by anyone who could've taken his card from his bar tab at this venue. I say that because it's likely the transaction marked the closing of his tab and the return of his card, and the venue closed at midnight, so Mr L would've then been elsewhere when the disputed transactions took place. And as I have no other persuasive evidence suggesting Mr L's card could've been anywhere else, I think it is likely it was in his possession at the time of the disputed transactions.

I've also considered that the transactions were made by someone who knew Mr L's PIN. Mr L says that he thinks he could've been shoulder surfed during the night by someone who later stole his phone. While I appreciate that shoulder surfing is a real possibility, the evidence shows Mr L hadn't used his PIN for a transaction in the last few days. And I don't think it's likely that someone had been following him for days before taking his card to make these transactions.

Mr L says his PIN for his Barclays debit card is the same as another card which he did use that night. So, I have also explored the possibility that someone had seen him enter his other card PIN. But Mr L also confirmed that his card was not stolen with his phone. So, this means another third-party, in addition to the party who stole his phone and potentially saw his phone passcode, shoulder surfed him on the same night to see his card PIN number. Then used the card and returned it to him that same night. While this is possible, I think it's unlikely. I say this because there were no incorrect PIN attempts on this card and Mr L had the card at the end of the night in his possession. So, it seems more likely than not that Mr L authorised these transactions himself.

Mr L is unhappy Barclays has not provided any information about the merchant the transactions were paid to. But I don't think this is unreasonable. I say this because the Payment Services Regulations 2017 (the relevant law which applies to disputed transactions) doesn't place any requirement on the business to explain where the money has gone. The requirement is that the business show that the transactions were authorised – which I am satisfied Barclays has done here.

While I am sure this outcome will come as a disappointment to Mr L, I am not upholding the complaint regarding the transactions made using Mr L's card and PIN. The transactions made via ApplePay and the bank transfer are no longer in dispute, so Barclays should refund these.

Putting things right

Barclays Bank UK PLC should refund Mr L the £400 in dispute for the ApplePay transactions and the bank transfer payment. It should also add 8% simple interest from the date it was paid to the date it is refunded.

My final decision

I am upholding the complaint in part. Barclays Bank UK PLC should put things right as outlined above.

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

Sienna Mahboobani
Ombudsman