

The complaint

Mr T complains Barclays Bank UK Plc won't refund a number of transactions made from his current account which he says he didn't authorise.

What happened

Mr T was on holiday abroad in August 2022 when he says his phone and wallet were stolen during a night out. Mr T later discovered four transactions had debited his account, totalling £1,047.90. The transactions were made using Mr T's debit card via Apple Pay.

Mr T reported the transactions as fraudulent to Barclays when he returned home a few days later. Barclays thought Mr T had authorised them, so said they weren't going to refund the amounts. Mr T was unhappy with Barclays' response so referred his complaint to our service.

An Investigator considered Mr T's complaint. He said, in summary, he also thought Mr T had likely authorised the transactions as Mr T had said he couldn't recall what happened on the night in question and Barclays records showed a number of logins on Mr T's mobile banking shortly before the disputed transactions took place.

Mr T didn't accept the Investigator's findings. He said he didn't authorise the payments as his phone was stolen and he has never visited a merchant by the name of the place where the disputed transactions took place. He didn't think it was acceptable that Barclays had allowed the payments to be approved, since they were clearly fraudulent.

As Mr T didn't agree, the complaint was passed to me to decide. I issued a provisional decision. I've set out my findings again below and they form part of this decision.

Provisional Findings

Under the Payment Services Regulations 2017, generally, Barclays can hold Mr T liable for the disputed transactions if the evidence suggests that he made or authorised the transactions himself.

The transactions were made using Mr T's debit card via Apple Pay. To access the card details on Mr T's phone, a third party would've needed to either know Mr T's phone passcode or use biometrics – such as a fingerprint or FaceID.

The last genuine use of Mr T's debit card was at 3:22pm on 12 August 2022. Mr T says his wallet and phone were stolen on that day – at around midnight. And he's provided a screenshot he says shows his phone's location in the country he had visited on 24 August 2022, after his return home. He's also said to us, and to Barclays, that he can't remember everything that happened on that evening and that his drink was spiked.

The first disputed transaction took place at 11:23pm on 12 August 2022 – which would have been just after midnight local time in the country Mr T was visiting. Prior to this though, there

was an attempted transaction in the same bar as the disputed transactions at 11:01pm for £148.70. This attempt was declined due to insufficient funds.

Barclays have provided Mr T's mobile banking records. These show a login to Mr T's mobile banking at 11:02pm, one minute after the failed transaction. Shortly after that, based on the statements, a transfer is made from another account in Mr T's name held at another bank to his Barclays account for £100. The first disputed transaction was for the same amount as the earlier declined attempt, £148.70. So it seems whoever made this transaction tried to make it using Mr T's debit card and PIN but when this was declined, logged into Mr T's mobile banking, saw there wasn't enough money in the account and transferred £100 to cover the transaction they were trying to make. It's unclear how they were able to do that bearing in mind Mr T has told us he hadn't disclosed his passcode for his phone. They would also have had access to the rest of the money in Mr T's Barclays savings account, about £200, so I find it unusual that a fraudster left this money untouched despite having access to it.

We asked Mr T to tell us more about the £100 transfer into his account and also about some disputed use of an account he held at another bank. Initially, Mr T said he didn't know where the £100 had come from, even though it appears to have come from another account in his name. So we asked him about this again and the other account, but he didn't reply by the deadline we set.

It's also unclear how someone could have used Mr T's debit card and PIN to attempt the first transaction – when he's told us there was no record of the PIN. I've considered the possibility that Mr T was observed using it but the last genuine use of the card was at 3:22pm – so several hours before the first disputed use. So I don't think it's likely Mr T was observed entering the PIN and was then followed for several hours before his wallet and phone were stolen.

Someone also used Mr T's mobile banking to increase the ATM limit on his debit card at 12:39am and turn off - and then on again - international debit card transactions at 12:41am. Again, it's not clear how someone other than Mr T could have done this since his mobile banking would have required a passcode, which Mr T says he didn't disclose, or touchID – which would've required Mr T's fingerprint to be used.

Based on everything I've seen, it seems unlikely Mr T was observed entering his PIN and there appears to be no other point of compromise for it – despite it being used initially. It would also be unusual for a fraudster, having full access to his card, PIN and seemingly to Mr T's online banking apps, to only make transactions in a bar – while also not using all the available funds.

Mr T also says he thinks his drink was spiked and can't remember much about the evening in question. I haven't seen any evidence, beyond Mr T's assertion that his drink was spiked. But in any event, it's also possible Mr T may have made the transactions himself and forgotten about them.

Overall, I find it most likely Mr T authorised these transactions so I'm not going to require Barclays to refund them.

The later transactions debited Mr T's account, despite there not being enough money in it. The terms and conditions say that Barclays won't normally allow someone to go overdrawn without an agreed overdraft in place but that there might be occasions where they're unable to refuse the transaction. We asked Barclays to tell us why these transactions were allowed to go through but they didn't answer our question. In any event, as I think Mr T likely authorised them I don't think this makes a difference to the overall outcome of his complaint.

Mr T is also unhappy that Barclays allowed these transactions to go through as he says they were unusual transactions for his account. I take his point, but I don't think these transactions were so significantly different from his usual account activity that they should have triggered Barclays to intervene.

Barclays Investigation into the transactions

Mr T is unhappy with the investigation Barclays undertook into the disputed transactions and how long it took them.

I can see from their letter dated 28 September 2022 Barclays told Mr T that all the disputed transactions had been completed using his genuine card and PIN. But that's not correct, the disputed transactions were all made using his debit card via Apple Pay. So Barclays gave Mr T incorrect information in this letter. And they told him it would take ten days to investigate his claim but didn't contact him to tell him the outcome for about six weeks. So I can see why Mr T was unhappy with this timescale.

Barclays haven't been able to locate any of the calls Mr T says he made to them during this period to discuss his claim - so I haven't been able to listen to them. But, I accept that Mr T likely made several calls to Barclays to chase things up.

Overall, I think Barclays' handling of Mr T's claim was poor for these reasons and so I think they should pay him £100 in recognition of the distress and inconvenience caused.

Responses to my provisional decision

Mr T responded to say he didn't agree with my provisional decision. I've summarised his reasons below:

- Mr T feels we have assumed he is lying and is upset as this was a frightening experience.
- Mr T wanted to know if we'd been provided with evidence the transactions were made using Apple Pay. And whether we'd considered any technology which would allow these transactions to have been made.
- Mr T says his drink was spiked and this should not go against him – he didn't knowingly authorise the transactions. He said we haven't taken into account he's provided evidence that his phone remained in the country he visited after he returned home.
- Mr T did not receive our email asking for further information about other transactions. He said this went to his junk folder. But told us he didn't complain to the other bank as no other money was stolen.
- Mr T doesn't think £100 is enough to reflect the distress and inconvenience caused.

Barclays did not respond by the deadline.

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.

As before, I've considered everything that's been provided – including Mr T's detailed response to my provisional decision. I've summarised that response above but I can assure him I've considered all his points, even if I haven't specifically mentioned them in my

decision. I'm only going to address here the ones that are relevant to the crux of his complaint.

I'm sorry to hear Mr T thinks we haven't taken his complaint seriously. I can assure him that we have. I don't doubt Mr T believes he's been defrauded in some way but what I must consider is whether Barclays have acted fairly by holding him liable for the transactions.

Barclays have provided evidence the transactions were made using Mr T's debit card via Apple Pay. I know Mr T was initially told different information but I explained this wasn't correct in my provisional decision. To access the card details on Mr T's phone, a third party would've needed to either know Mr T's phone passcode or use biometrics – such as a fingerprint or FaceID. Mr T is concerned that we haven't considered any other ways for his phone to have been accessed. I've thought about this, but beyond Mr T's suggestion that this is what happened, all the evidence I've seen suggests its most likely the phone was accessed in the usual way, for the same reasons I've given in my provisional decision. So I still think its more likely than not that Mr T authorised the transactions.

Mr T says his drink was spiked and this means he couldn't have knowingly authorised the transactions he's disputing. However, authorisation for the purposes of the Payment Services Regulations doesn't require Mr T to have been aware at the time or remember now what he was authorising. So I accept what Mr T says about this, but it doesn't mean Barclays are obliged to refund the transactions. Even if Mr T was under the influence of something, and/or was being tricked into authorising payments, he would remain responsible for them if he completed the transactions himself, which I'm persuaded he more likely than not did.

Mr T has said he didn't complain to other bank where there was disputed use of his account as no money was taken from it. But he still hasn't provided information about where the £100 transfer in came from, despite now being aware we asked him about this. This is important because the transaction shows a greater level of involvement than just the use of Apple Pay. It shows an awareness of a reduced balance and action being taken to address that. It also shows that other banking apps were more likely than not being accessed and used, and not just the Apple Pay function on the phone. And the Barclays app has a five-digit passcode, whereas an iPhone has a four or six digit passcode, so the same passcodes couldn't have been used for both. That reinforces my finding that it was more likely than not Mr T carrying out that activity, rather than an unknown fraudster.

Mr T also provided evidence his phone remained in the country he had been visiting when he returned home. I understand why he thinks this supports his case but, when weighed against the other available evidence, it doesn't persuade me to change the outcome.

Mr T says £100 isn't enough to compensate him for what happened. But Barclays aren't responsible for the disputed transactions taking place, so I can't fairly say Barclays need to compensate Mr T for any distress and inconvenience caused by them in the first place. And I've reconsidered the overall impact of Barclays providing the wrong information and taking longer than promised to look into Mr T's disputed transactions in light of his comments. Having done so, I still find £100 fairly reflects the distress and inconvenience caused.

Overall, I remain satisfied Barclays don't need to refund Mr T the disputed transactions but should pay him £100 in recognition of the poor service it provided when he raised them with the bank.

My final decision

For the reasons I've explained, I uphold Mr T's complaint in part.

To put things right, I require Barclays Bank UK Plc to pay Mr T £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 17 May 2024.

Eleanor Rippengale
Ombudsman