

The complaint

Mr R is unhappy Barclays Bank UK PLC (“Barclays”) won’t reimburse him the money he lost when he fell victim to a scam.

What happened

The details of this case have been clearly set out by our Investigator. As such, the facts are well-known to both parties, so I don’t need to repeat them at length here.

In summary, Mr R held a current account with Barclays. Mr R approached a genuine travel agent and paid a deposit of £600 for some flights to see visit his mother abroad who was ill. Later on, Mr R contacted the travel agent again to make some amendments. At some point Mr R says the line was cut off and he was called back by someone who purported to be a manager of the travel agency.

Mr R made some amendments to the arrangements and paid a further £3,426.42 through his debit card over the phone. Unfortunately Mr R was no longer speaking with the genuine travel agent and was in fact speaking to a scammer. And Mr R had been duped into paying another flight provider for flights that weren’t in his name and were in someone else’s name.

Mr R grew suspicious when he didn’t receive an invoice in advance. He then received an invoice and checked the reservation for the flights, and they weren’t showing with the flight provider. Mr R then contacted the genuine travel agent who advised they didn’t have anyone working there with the name Mr R had been dealing with. Mr R realised he had fallen victim to a scam.

Mr R contacted Barclays to advise it of what had happened, and to seek a refund of the money. Barclays raised a chargeback – which the merchant defended. Barclays didn’t appeal as, due to some communication errors, the time elapsed under VISA’s chargeback rules as Mr R was away (abroad) visiting his mother at this time. Barclays offered Mr R £100 for the level of service it provided.

Unhappy with Barclays response, Mr R referred the matter to our service.

Our Investigator looked into the complaint and didn’t recommend the complaint be upheld. They considered Mr R, despite being a victim of a scam, had ‘authorised’ the transaction of £3,426.42 as Mr R had provided his card details for the execution of the payment.

They also didn’t think Barclays ought to have done more to identify the payment as potentially fraudulent in the circumstances.

And they also considered that while there were errors in Barclays handling of the chargeback claim, it was likely to have been unsuccessful in any event. They considered Barclays offer of £100 for the level of service provided was fair due to inconvenience caused to Mr R.

Mr R has asked for the matter to be referred to an ombudsman, so it's been passed to me to decide.

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'm not upholding Mr R's complaint. I know this will come as a disappointment to him as was the victim of a cruel scam and lost a lot of money, but I'll explain my reasons why.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. This is set out within the 'Payment Service Regulations 2017' ("PSRs") and these are the relevant regulations in place here.

Under 'Section 67' of the PSRs it states:

"67.— (1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—

(a) the execution of the payment transaction; or

(b) the execution of a series of payment transactions of which that payment transaction forms part.

(2) Such consent—

(a) may be given before or, if agreed between the payer and its payment service provider, after the execution of the payment transaction;

(b) must be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider; and

(c) may be given via the payee or a payment initiation service provider."

So the question I have to ask myself here is whether the payment transaction made is considered as authorised as set out by the PSRs. So, whether Mr R consented to the execution of the payment transaction. Consent, in this context, is explained as being given in the form and in accordance with procedure agreed between the payer (Mr R) and the payment service provider (Barclays).

Consent is typically given by a consumer providing the relevant card details over the phone or entering them online, or by other means such as contactless or entering a PIN on a terminal or ATM. A consumer, using the card or its details in this way is, for the purposes of the PSRs, a consumer authorising a payment transaction. They have consented to the execution of the payment transaction by providing their card or the details of their card.

It is important to point out that consenting to the execution of a payment transaction is an objective test and it doesn't depend on what Mr R knew at the time he completed the procedure for giving consent.

Mr R provided the relevant card details for the transaction to be paid. Mr R was aware of this payment (albeit under deception) and unfortunately, by providing his card details, Mr R has, in line with the PSRs, given his consent (in accordance with the procedure, agreed between him and Barclays) to the execution of the payment transaction.

This means that under the PSR's Mr R has authorised the debit card transaction of £3,426.42 and is therefore responsible for it. That remains the case even though Mr R was the unfortunate victim of a scam.

There are times when I might expect a bank to question a transaction or payment, even though it may have been properly authorised. Broadly speaking, firms like Barclays have certain obligations to protect customers from fraud.

In this case, I need to decide whether Barclays acted fairly and reasonably in its dealings with Mr R when he made the debit card payment or whether it should have done more than it did.

I've thought about this carefully. From what I've seen, there isn't anything unusual or remarkable about the debit card payment or the amount that ought to have alerted Barclays to the possibility Mr R was being scammed. Banks process a high volume of transfers and transactions each day. And a bank has to strike a balance as to when it should possibly intervene on a payment against not holding up or delaying its customer's requests. Here the payment had been authorised with Mr R's card details and was going to a legitimate merchant, so I don't think Barclays acted unreasonably in not flagging the payment for any further additional checks.

I appreciate Mr R contacted Barclays as soon as he discovered he had fallen victim to a scam – and Barclays raised a 'chargeback' under VISA's chargeback scheme (which has certain requirements in order for a claim to be successful and doesn't cover all disputes). However when considering VISA's chargeback requirements I am mindful that there wasn't any reasonable prospect of success unfortunately. The flight tickets that had been paid for had been booked and were non-refundable by the merchant. And the flight provider (even though the tickets were in someone else's names) was also operating. In short, the service that the merchant had been paid for, was provided. This means it would have been able to successfully defend the chargeback as it did.

I do agree that Barclays could have been clearer in its communication around the process of the chargeback claim and the time limits that apply. Mr R was told he could provide information when the deadline had seemingly already passed. And as I've said, it didn't have a reasonable prospect of success in any event. So I agree that compensation to recognise this was warranted. And I consider the amount of £100 (which I understand has already been paid) is a fair amount to recognise the unnecessary inconvenience Mr R was put to.

Overall, while I appreciate Mr R's been the unfortunate victim of a scam, I think Barclays' decision not to refund him in this instance was fair and reasonable in the circumstances. I say this because I'm satisfied that Mr R, by providing his card details, consented to the execution of the payment transaction. Barclays followed Mr R's instructions to make the payment and I haven't seen any reason why it shouldn't have done this. And unfortunately, despite raising a chargeback – this was defended by the merchant and also had no reasonable prospect of success under VISA's chargeback rules in any event.

So I don't consider Barclays were liable for Mr R's losses and unfortunately it couldn't assist him further in regard to any attempted recovery.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 June 2024.

Matthew Horner
Ombudsman