

The complaint

Miss R complains Barclays Bank UK PLC will not refund her over £3,800 taken fraudulently from her account without her authority.

What happened

Miss R telephoned Barclays on 5 March 2024. During this call Miss R discussed a series of payments that had been made from her account to a cryptocurrency exchange. Miss R said she didn't know the company the payments had been made to explaining she thought she had approximately £500 in her account but had only £40 left.

During the call Miss R discussed the various payments she had discovered to the crypto exchange, including payments in December 2023 and February 2024. The adviser explained they could raise a fraud claim but would need to cancel her bank card.

Miss R said she required her bank card that day as she needed to travel and had no alternative method to pay for it. The adviser discussed when she would be home explaining Barclays was open until 8.00pm that evening. The call ended with Miss R agreeing to call up before 8.00pm, or first thing the next morning, to cancel her card.

Miss R did not call Barclays again until 25 March. During this call Miss R explained further payments, which made up the majority of the £3,800 claim, had gone to the same crypto exchange. Miss R explained she hadn't cancelled her card as she had no way of travelling without it. During this call Miss R cancelled her card and started a fraud claim with Barclays to obtain a refund.

Barclays wrote to Miss R in May 2024. It said it couldn't find any evidence of fraud or that the payments were made by a third party. Miss R raised a complaint with Barclays and it wrote a final response letter in June maintaining its position.

Barclays has since explained its decision in more detail to our service. Barclays said Miss R had made previous undisputed payments to this crypto exchange in December 2023, and in January and February 2024. Barclays suggested the evidence shows Miss R was likely aware of the transactions occurring as she logged on to her account throughout this period. Barclays explained Miss R could also have used the app to block her card. Barclays thought Miss R had funded the payments as she transferred in over £7,000 to her account in March. Barclays illustrated she usually only transferred in between £2,000 and £4,000 per month, it therefore rejected Miss R's claim.

Our investigator didn't think Barclays needed to refund Miss R. They explained the evidence from phone conversations and online logins showed Miss R knew the funds were going out of her account but didn't act and funded the payments, and therefore concluded Barclays were not liable to provide a refund in these circumstances. Our investigator also thought Miss R authorised the transactions.

Miss R responded stating she had not authorised these payments and she had not had any prior dealing with the crypto exchange in question. She explained Barclays has insurance which covers this and therefore should refund the money taken. Miss R also explained she believed she had reported the fraud in early March when she first called.

As Miss R rejected our investigators recommendation, her complaint has been passed to me to make 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.

I appreciate how strongly Miss R feels about her complaint. Although I may not mention every point raised, I have considered everything but limited my findings to the areas which impact the outcome of the case. No discourtesy is intended by this, it just reflects the informal nature of our service.

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

The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So, the first issue for me to determine is whether it is more likely than not Miss R carried out the transactions herself. If she authorised someone else to carry out the transactions for her, this would also be considered as carrying out the transactions herself.

Firstly, I can see payments started to the crypto exchange in late 2023. Between early December and when Miss R reported these transactions, only a few transactions occurred, these transactions were spread for amounts between £20 and £100 over this time period and added up to over £400.

Miss R reported these transactions on 5 March. After this date the transactions appear to have increased in both value and frequency. For example, on 12 March nearly £500 over five transactions occurred to this crypto exchange. Miss R had transferred in £1,800 the day before, which meant these payments were paid and these transfers in also funded a similar amount of payments to the crypto exchange on 13 March.

I can see after Miss R has reported the transactions, the payments to the crypto exchange increased dramatically, with approximately £3,000 paid to this merchant through this period.

Miss R has explained her debit card remained in her possession throughout these transactions and she had not provided her card or PIN to anyone else. However, Barclays has provided evidence a registered device was used to make these payments to the crypto exchange. The device in question was set up using a One Time Passcode (OTP) in October 2023. This device was then used to make transactions Miss R has not disputed, including supermarket and gym transactions in November 2023.

I appreciate Miss R did not raise issues with payments to the crypto exchange until March, despite, as established, reasonably sized transactions leaving her account throughout late 2023 and early 2024. I therefore can't see how this device would have been set up without her authority and knowledge.

I also don't think the pattern here is typical of what we would expect. The payments to the crypto exchange started small and infrequently over a few months. Typically, fraudsters will attempt to take as much as they can as quickly as they can before the fraud is detected. This is not what has happened here.

Moving on to the action Miss R took after reporting the fraud, I have listened to the calls Miss R made to Barclays carefully. I am satisfied the adviser was clear about what Miss R needed to do, which was to cancel her card either later that day or first thing in the morning.

However, Miss R didn't contact Barclays again for nearly three weeks and continued to use her card throughout March. I can see transactions made for travel purposes throughout this period, which support her reasons for not cancelling the card. There are numerous non-disputed transactions, including faster payment transfers, mixed in with the crypto exchange

payments, with funds regularly being transferred in by Miss R to this account which meant these transactions to the crypto exchanged continued to be funded.

Barclays provided our service with details relating to logins on Miss R's online banking. It shows Miss R used her mobile phone for banking activities over 50 times in March. I am therefore satisfied this shows it is more likely than not Miss R was aware these payments were going out of her account and didn't take any further action during these three weeks.

The Payment Services Regulation 2017 Section 72 explains the obligations payment service users have in relation to payment instruments. 72(1a) explains payment service users must notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

Section 77(3b) explains the payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer has with intent or gross negligence failed to comply with regulation 72.

Gross negligence isn't defined, but the Financial Conduct Authority (FCA) provided guidance, stating '*... we interpret "gross negligence" to be higher than the standard negligence under common law. The customer needs to have shown a very significant degree of carelessness*'. Our service considers there needs to be evidence of the conduct undertaken with a serious disregard to or indifference to an obvious risk.

Barclays terms and conditions also say '*if you think a payment from your account wasn't authorised...you must tell us as soon as possible*'.

However, as the device was registered and has been used for non-disputed transactions, this pattern suggests to me it is likely Miss R may have had some knowledge of what was occurring here. I say this because I cannot see why, on balance, Miss R would have continued to place several thousand pounds of her own money in this account to fund this spending over this three-week period if she knew it was fraudulent.

In summary, Miss R chose not to cancel her card as instructed, but instead chose to regularly fund these disputed transactions throughout March. The device has been registered and used for non-disputed transactions previously, Miss R has stated she hasn't provided her details to anyone else, and I am not satisfied the pattern of payments are typical of fraudulent activity. Furthermore, she could have used the app to suspend her card which would have protected her account if she didn't know what these payments were for. It seems, therefore, Miss R knew payments were regularly leaving her account, but didn't do anything to stop them. This is inconsistent with what I would reasonably expect where fraud was occurring on an account.

I am also satisfied the evidence suggests Miss R was under the misapprehension these payments were covered by an insurance policy after she had reported them. In particular I note the comments our investigator highlighted as evidence from the call on 25 March namely '*it's only a little bit of money. I'll get it stopped in a minute*' and '*...noticed a lot of money going out but needed to keep using my card. Will cancel it on a day I'm in. Didn't cancel it because thought it was only a couple hundred pounds.*'

I therefore broadly agree with the recommendation of our investigator. On balance, for the reasons I have given, I am persuaded these payments were authorised and I do not think it would be fair or reasonable to hold Barclays liable for these transactions.

I appreciate Miss R will be disappointed with my decision, but I trust I have explained my reasons as to why I do not think it is fair or reasonable to hold Barclays liable for a refund.

My final decision

For the reasons I have given, my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 14 March 2025.

Gareth Jones
Ombudsman