

The complaint

Mrs M complains that Barclays Bank UK PLC (“Barclays”) failed to refund transactions she didn’t recognise.

What happened

Mrs M noticed her account had less money than she expected and spoke with Barclays, she also realised she no longer had possession of her debit card. They advised her that a number of transactions had taken place using her card with the correct personal identification number (PIN), including cash withdrawals and purchases of expensive items which virtually emptied her account. These transactions were made in a nearby town.

Mrs M said she hadn’t made those transactions or visited that town for some time. Barclays reviewed the situation and asked Mrs M about the use of her card. During conversations held with them, Mrs M confirmed that she’d previously let another person withdraw cash for her from an automated teller machine (ATM). Mrs M didn’t think that this person was responsible as she believed she’d had her card back and lost it sometime later from her handbag.

Mrs M couldn’t offer any explanation how someone could have obtained her card and her PIN without her permission. Barclays declined to refund the £13,350 disputed by Mrs M, but they sent flowers, chocolates and paid £150 as a gesture of goodwill for the distress experienced.

Mrs M was unhappy with Barclays decision and brought her complaint to the Financial Ombudsman Service for an independent review where it was assigned to an investigator. They asked both parties for information about the circumstances and Mrs M was asked about the use of her card.

She was able to say that:

- She had asked someone else to take cash out of an ATM before but didn’t think they were responsible for the loss of her funds and had received her card back.
- A neighbour assisted her to make online shopping orders, but they didn’t have access to her card or know the PIN.
- She’d reported the loss of her funds to the police.

Barclays provided evidence of the disputed transactions showing they used Mrs M’s genuine card and PIN. They also provided records of their own investigation.

After reviewing the evidence, the investigator concluded that it was reasonable for Barclays to decline Mrs M a refund. It was commented that due to variances in Mrs M’s version of events, it was difficult to understand what had happened to her card and how anyone else had obtained her PIN without her knowledge.

Mrs M disagreed with the outcome and asked for a further review of her complaint which has now been passed to me for a decision.

As part of my own investigation, I asked for enquiries to be made with the police and further questions for Mrs M.

- Mrs M said that no one else had opportunity to take her card or obtain her PIN.
- The police believed Mrs M was a victim of a sophisticated fraud to obtain her card and PIN.

I issued my provisional findings on the merits of Mrs M's complaint on 11 October 2024. In my provisional findings, I explained why I intended to uphold Mr M's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

"What I've provisionally 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Barclays can hold Mrs M liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them, but Barclays cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless Barclays can show that consent has been given, it has no authority to make the payment or to debit Mrs M's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mrs M.

It's not my role to say exactly what happened, but to decide whether Barclays can reasonably hold Mrs M liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

Having reviewed the evidence, I'm satisfied that the two purchases and cash withdrawals were made with Mrs M's genuine debit card using the correct PIN. It's also apparent that throughout the investigations carried out by Barclays and our service that Mrs M has offered slightly different versions of the events leading up to the loss of her card.

It's been difficult to unpick how these transactions happened based on the testimony provided by Mrs M. I wasn't surprised that Barclays declined the refund, and our investigator thought their decision was reasonable. That's because the evidence pointed towards Mrs M somehow allowing others to use her card – which would, in most circumstances make her liable for the use of it.

But, there's new evidence that Mrs M was caught up in a sophisticated fraud and whilst it would be inappropriate of me to comment further, I'm satisfied that Mrs M gave her card and PIN details to someone believing this was an appropriate thing to do in the circumstances.

Given this new evidence I've thought about whether it's appropriate for Barclays to refund her and I think they should. Even though what likely happened here is that Mrs M passed over her details to another person, she did so in good faith. I don't think she was aware they were going to be used to make purchases, thus there was no "apparent authority".

Was Mrs M grossly negligent?

Account holders can be held responsible for some transactions they didn't make if it can be shown they acted with a very significant degree of negligence. I've thought whether Mrs M was grossly negligent when she took this action, but I don't think she was. I haven't been provided a detailed explanation of what happened, but based on evidence I have reviewed, it's likely Mrs M believed she was authorised to release her card and PIN. In such circumstances, I don't think there's an argument to say she acted unreasonably.

Whilst I haven't explained in great detail the information provided to me because this remains confidential, I am aware Barclays have already been contacted about the situation, so should have an additional understanding of what's happened.

Based on a review of the evidence including the additional information supplied to our service, my current thoughts are that I think it's more likely than not that Mrs M wasn't responsible for the transactions she's disputed, and it would be both fair and reasonable for Barclays to refund them.

Barclays have already sent gifts and paid Mrs M £150 for the distress she experienced from losing her money and I think this was a fair and reasonable approach for Barclays to take at the time.

My provisional decision

It's my intention to uphold this complaint and require Barclays Bank UK PLC to make a refund to Mrs M for the transactions she's disputed, including interest for the loss of use of her funds."

I invited Mrs M and Barclays to give me any more evidence and information they wanted me to consider before issuing my final decision. Both parties have subsequently accepted the provisional 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.

Having done so, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

I'm grateful to both parties for their continued assistance and prompt responses which has enabled the complaint to be finalised as soon as practicable.

My final decision

My final decision is that I uphold this complaint against Barclays Bank UK PLC and they're instructed to refund the losses reported by Mrs M which total £13,350, to include simple interest at 8% per annum from the date of loss to the date of repayment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 November 2024.

David Perry
Ombudsman