

The complaint

Mr N complains Barclays Bank UK PLC (“Barclays”) refuses to refund him for transactions made with his debit card which he says he didn’t authorise.

What happened

The facts of this case are well known to both parties, so I will not repeat them in detail here.

In summary Mr N says hadn’t realised he’d lost his debit card and PIN until he received an email from Barclays saying he was nearing his credit limit on his Barclays credit card account. Mr N says he hadn’t been using his credit card and realised both his credit card and debit card were missing and had been used to make unauthorised transactions. So, he raised this with Barclays.

The disputed transactions considered in this complaint were all made using Mr N’s debit card and PIN between 29 August 2023 and 5 October 2023, totalling £24,990.

Mr N says he suffers from memory loss and struggles to remember his PIN. He called Barclays in June 2023 to discuss the problems he was having with his Barclays app which had prevented him from viewing his PIN when he needed it. Mr N says he was advised during that call to write down his PIN, but he is unhappy he is now being told this was in breach of the terms and conditions.

Mr N feels Barclays has not properly addressed his vulnerabilities and has not supported him adequately. He is also unhappy that Barclays didn’t protect his account by flagging any of the disputed transactions as unusual or suspicious. Mr N says Barclays should refund all the disputed transactions as unauthorised.

Barclays says it does not have sufficient evidence to conclude a third party was responsible for the transactions in dispute. It also says Mr N was in breach of his terms and conditions, and was grossly negligent, for writing down his PIN and keeping it together with his cards. So, it held Mr N responsible for these transactions and refused to refund them.

Our investigator considered this complaint and decided not to uphold it. Based on the evidence she was not persuaded a third-party had made the transactions on Mr N’s account. Mr N wasn’t happy with this outcome, 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.

Mr N has raised a number of points and although I may not mention every point raised, I’ve considered everything he has said 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.

In these circumstances there are regulations which govern disputed transactions. 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.

However, the regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "gross negligence." So, I've considered whether it's more likely than not that Mr N authorised the transactions himself, or whether he failed to keep his details secure through gross negligence.

I've looked at the technical evidence about the transactions. They were all carried out using Mr N's genuine card and PIN. Mr N says after becoming aware his accounts had been compromised, he realised his cards were not kept in his safe place at home, so he thinks they were lost or stolen when he was out in his local area.

Mr N has told us that he wrote the PIN down, on the instructions of a Barclays representative, and kept this with his card. He says this was because he suffers from memory loss, and problems with his app meant he was unable to view his PIN when needed.

There are three possible options here. One is that Mr N carried out the transactions himself. Another option is that he consented to the transactions by making the card and PIN available to someone else. The third option is that a third-party, unknown to Mr N stole the card and found out the PIN because he'd written it down with the card.

In practical terms, it doesn't make any difference which of these three options happened here. That's because Mr N is liable whether he carried them out himself; or allowed someone else to do so by letting them have his card and PIN; or was grossly negligent by writing down his PIN and keeping it with his card. The terms and conditions of the account, to which Mr N would have to have consented when opening the account, provide that customers must keep their security information secure, so by not doing so, Mr N was breaking the terms and conditions of his account and was grossly negligent.

I've considered what Mr N has said about the fact that he was ill-advised by Barclays to write down his PIN, and that he wasn't specifically told not to keep this with his card. However, I don't consider the act of just writing down the PIN to amount to gross negligence. In the same way that keeping the original PIN letter, or a PIN reminder letter, would not amount to gross negligence. However, I would expect a consumer to make the effort to store this in a safe and secure place, in the interest of protecting their account security. I've listened to the call Mr N had with Barclays and I've heard that he was instructed to leave the PIN in a safe place and call home to ask a trusted person for the PIN.

I've also borne in mind the other factors such as the pattern of the disputed transactions which doesn't match that of a normal fraudster. Fraudsters tend to carry out transactions very quickly, to maximise their gain before the card can be blocked. That's not what happened here, where the disputed transactions took place daily for over a month, with only two transactions made for store purchases. Usually when a fraudster has access to someone's card and PIN, they would be making multiple transactions a day as well as ATM withdrawals. There were also no attempted transactions after Mr N reported the dispute, which I understand would be recorded as a declined transactions even if the ATM retained and destroyed the card.

In addition, Barclays has provided evidence that it sent Mr N a text message to his

registered phone on 1 September 2023, alerting him that he had reached his daily withdrawal limit for the day. Mr N says he didn't receive this message, but the evidence shows that he was receiving messages from Barclays to the same number on a regular basis. So, it seems more likely than not that he would've received this message as well. And I think, had Mr N been unaware of the transactions he would've flagged them when he received this message.

Overall, I find that the only possibilities are that Mr N carried out the transactions himself; that he allowed someone else to use his card and PIN; or that he was grossly negligent because he had written down his PIN and kept it with his card, breaching the account terms and conditions. Mr N is liable in all three scenarios. So, I don't uphold Mr N's complaint and Barclays doesn't have to refund him.

My final decision

For all the reasons outlined above, I am not upholding the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 February 2025.

Sienna Mahboobani
Ombudsman