

## The complaint

Mr O, helped by a representative, complained because Barclays Bank PLC refused to refund him for transactions he said he didn't authorise.

## What happened

Mr O opened a Barclays account on 15 August 2017, during a short stay in the UK. There were transactions over the next few months. By the end of that year, Mr O's balance was £56,108.52. Mr O then went back to his home abroad, but he didn't notify Barclays of a change of address.

There were card payments on Mr O's account between 15 April 2019 and 14 October 2019, leaving a balance of £43,357.85. There were then no further transactions for some time.

On 16 February 2023, Barclays wrote to Mr O. It said:

*"We've noticed you haven't made any transactions on your current account for a while and have some money in your account, so we wanted to check in with you. If you'd like to keep it open, please let us know. If we don't hear from you, we'll automatically close your account on or shortly after 17 May 2023. This is to help reduce the potential for fraud and identity theft."*

Mr O didn't reply so Barclays closed the account on 13 July 2023.

In December 2023, Mr O visited the UK. He went to a Barclays branch. He told staff that he hadn't received Barclays letter of 16 February. He completed a form to reclaim the money and the balance of £43,357.85 was sent to and received by Mr O. Mr O also asked for statements of his account.

Mr O contacted Barclays again when he'd received the statements. He disputed the transactions which had taken place in 2019, which totalled £12,750.67. There was communication between Mr O and Barclays in early 2024, but Mr O didn't get a response.

Mr O contacted this service in May 2024.

Our investigator contacted Barclays and more information was provided by both Mr O and Barclays:

- Mr O said his card had been blocked in late 2017 because he'd used the wrong passcode. He said he didn't have online banking or other access to his account so couldn't have made the disputed 2019 payments. He said he'd opened his account when he'd come to the UK in 2017 to learn English, then went back abroad. He said he hadn't received any texts, though Barclays had his mobile number. And he said he'd asked his representative to go to a Barclays branch to get the card unblocked, but the branch wouldn't do this for his representative.
- Barclays didn't agree that Mr O's card had been blocked. It said as the disputed 2019 transactions had been made on the debit card, it must have been open and active at the time, though because it had been a long time ago, it could no longer access full details about the transactions, or phone call recordings.

Barclays replied to Mr O on 9 August 2024. It said it no longer had the relevant call recordings because they were on its old computer system. Mr O had said that he'd called to dispute the transactions and had been told he'd have to come back to the UK to do that. Barclays said that as it no longer had the call recordings, it would pay him £600, which was half the cost of the flight tickets. It also paid him £200 compensation as an apology for the frustration he'd suffered, for ringing multiple times and being asked to travel from abroad. Barclays said it was still investigating the disputed transactions and it would write when this was completed. But Barclays said it couldn't reopen Mr O's account, because he lived abroad, and it was part of the account terms and conditions that a customer had to live in the UK to open an account.

On 7 October 2024, Barclays wrote to Mr O about the disputed 2019 transactions. It said that it couldn't find any evidence of fraud. It said that as part of its decision it had considered: the security capability of the card; Mr O's security obligations under the terms and conditions of the account; and the details of the disputed transactions, including the type of transaction to whom the payment was made, and location where the transactions took place. It said there was no evidence to suggest the payment had been made by a third party, so it didn't think it was fraud, and wouldn't refund the disputed £12,750.67.

Mr O, helped by his representative, didn't agree.

He said that he had the original bank card with him abroad, and had never given the details to anyone else. He hadn't been in the UK since opening the account in 2017. He said that it was most likely that Barclays had sent a new card to the UK address well before the original one expired, and if Barclays hadn't done so, no-one could have known the details of the card and been able to spend the money.

Mr O also explained that the address he'd used when opening the account had been his representative's. Mr O's representative had then moved in November 2017, and the address hadn't been updated on Mr O's account. Mr O said this was because Barclays only allowed Mr O himself to update the address, and Mr O lived abroad.

Mr O, via his representative, said that he'd opened a bank account, deposited money in his account, and expected to use this money whenever he wanted, irrespective of any terms and conditions. He said the fraud was caused by Barclays itself, by sending a new card when it was not due, not expired and not requested. He said the fraud hadn't been caused by Mr O not having access to his account. Mr O said he demanded that Barclays refund him with the money stolen as a result of its own incorrect actions, and compensate him for harsh treatment for almost a year.

Our investigator didn't uphold Mr O's complaint.

He said that it was Mr O's responsibility to check his account, and update Barclays with any changes of address. This was covered in the terms and conditions of the account. Mr O could have spotted the disputed transactions and reported them sooner, if he'd been receiving statements regularly.

He said that Mr O hadn't informed Barclays of his change of address, or registered for online banking. So he hadn't been checking his account. The disputed transactions had been reported in January 2024, but had taken place over four years earlier between April and October 2019. The investigator didn't believe there had been any exceptional circumstances for Mr O not reporting them sooner. And Mr O had confirmed he had the card in his possession, and hadn't given his card to anyone. So the investigator couldn't see how an unknown third party could have made the disputed transactions. He said he was satisfied

that Barclays had only issued one card to Mr O, and there was no evidence of a second card being sent to the out-of-date address as Mr O's representative had alleged. Nor were the transactions typical of fraud, because there was over £43,000 in the account after the transactions. A fraudster would have emptied the account.

Mr O wasn't satisfied. He said:

- he'd phoned Barclays as soon as his card was blocked and told them he lived abroad, and his representative had also gone to a Barclays branch and told them Mr O lived abroad. He said that when he opened the account, he hadn't been told he had to have online access, nor that he had to check his account;
- as he hadn't made the transactions, it was undeniable that there had been fraud;
- he hadn't been told he had to have online access;
- that our investigator must be the only person not aware of current clever bank scams, and banks would go to any lengths to deny their responsibility for fraud;
- that our investigator couldn't make a judgment that only one card had been sent to Mr O, because what evidence did we have that Barclays was telling the truth?
- In response to the investigator saying that a fraudster wouldn't have left money in the account, he said the pattern of behaviour was typical of fraudulent behaviour of the bank.

Mr O asked for an ombudsman's 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.

#### *What the relevant Regulations say*

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. 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*."

And regulation 74 also says:

*"Notification and rectification of unauthorised ... payment transactions*

*74.—(1) A payment service user is entitled to redress ... only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction."*

#### *What the Terms and Conditions of Mr O's account say*

The Terms and Conditions of Mr O's account are also vital here. These govern the account and by opening the account, Mr O had accepted these. So he knew about these from the outset. There are several ways in which these are relevant to Mr O's complaint.

First, in relation to the time limit of 13 months I've mentioned above, Barclays' terms and conditions say it doesn't automatically adhere to the legal 13 months limit, but looks at the circumstances. Section 9 of the terms and conditions says:

*“By law you may have a maximum of 13 months to tell us, but we don’t tend to stick to this timescale and will look at your circumstances and why it has taken you longer to report it if it’s beyond that time.”*

Section 9, about unauthorised payments, also says that customers must tell Barclays promptly:

*“If you tell us a payment from your account wasn’t authorised (for example, someone else made it), you can ask us for a refund. You need to tell us as soon as possible.”*

A key reason why there’s a deadline is so that relevant technical evidence about any disputed payments is still available.

The Terms and Conditions are also relevant in relation to Mr O not checking his account regularly. Mr O argues that he wasn’t told he had to have online banking, or that he had to check his account regularly. Mr O didn’t have to have online banking. But he did have to check his account regularly, whether he chose to do that by paper statements or by online banking. Similarly, he was responsible for ensuring that he notified Barclays of his contact details. These obligations are set out in the terms and conditions of the account. Here are some of the relevant sections:

*Section 3:*

*We need you to tell us about changes to your situation or personal details, and we’ll keep you informed about certain things that affect you. It’s essential that you keep us informed if there are any changes to your situation, contact or personal details or any other important changes that are relevant to us*

*...*

*Keeping your details up to date*

*When we send information to you, we’ll send it to the most recent contact details we have for you. If these details change and you don’t tell us straight away, you might not receive information that could be important – or it could fall into the wrong hands. If you have given us any contact details... you must let us know if they change.*

*This will include your:*

- *home or correspondence address*

*...*

*We’ll keep you informed about your account*

*We’ll always make information about payments into and out of your account available to you through Online Banking and Telephone Banking. You can also get this information by asking in a branch or using an ATM. If you use Telephone Banking, you can ask us to send you the information in writing...*

*Unless you have opted otherwise, we’ll also put the same information on monthly statements and provide these to you free of charge.*

*You must check the information we give you, as we need you to tell us as soon as you can if something is wrong. ”*

So Mr O had to keep Barclays informed promptly about changes to his address and other details, and he also had to check the information on the statements which Barclays provided. He also had to tell Barclays promptly about any disputed payment.

*What this means for Mr O’s complaint*

Mr O didn’t report the disputed transactions to Barclays until January 2024, which was over four years after they’d happened between April and October 2019. I find that four years didn’t meet the requirements of the terms and conditions to tell Barclays promptly. It was well over the 13 months set out in the Payment Services Regulations. And although Barclays’

terms and conditions said that it would look at the circumstances if a customer didn't meet the 13 month deadline, I'm not persuaded that Mr O provided any valid reason why he hadn't reported the disputed 2019 transactions for over four years.

Mr O said he didn't know about the transactions until early 2024. But that wasn't Barclays' fault. Mr O had failed to notify Barclays of his change of address, or to check his account regularly. The address he gave on opening, which was that of his representative, was no longer valid after Mr O's representative moved home in November 2017. Mr O must have known at that point that he had to notify Barclays and provide a valid current address.

Mr O had an obligation to check the information on his account. So I consider he should have got in touch with Barclays about why he hadn't received statements, long before he did. If he had done, he'd have been able to raise the disputed transactions within a reasonable time of them happening, which he was required to do.

The regulations also mean that we can consider exceptional circumstances why a customer didn't report disputed transactions promptly. Mr O hasn't suggested any exceptional circumstances, and I don't consider the fact that he lives abroad counts as "*exceptional circumstances*." Where he lived didn't prevent him from contacting Barclays to notify it of his address for statements, or prevent him from raising the disputed transactions sooner.

*Who is more likely than not to have authorised the disputed transactions?*

Mr O has argued that Barclays issued another card, before the current card expired, and that this was how the disputed transactions were carried out. There is no evidence for this assertion by Mr O. I've seen the technical computer evidence for the cards issued on Mr O's account. There was only one card issued. This card, which Mr O said remained in his possession throughout, was the one used for the disputed transactions. So I don't accept Mr O's theory, for which there is no evidence. And even if Barclays had issued another card (which I accept it didn't), if Mr O had kept his address up to date, any such second card would have gone to Mr O's correct address.

If Mr O allowed anyone to use his card and details, that would count as Mr O authorising the transactions himself. Similarly, if he didn't keep his card and details sufficiently secure, so that someone could have taken them and carried out the transactions, then returned the card, all without Mr O's knowledge, that could be "*gross negligence*" and again Barclays wouldn't have to refund him.

I've also considered the pattern of the disputed transactions between April and October 2019. There are many of them, over a long period of time, mostly small transactions which look like general living expenses, such as small travel journeys, food, and cinema bookings. And when the last transaction ended, there was still £43,357.85 in the account. It isn't at all likely that a fraudster with access to an account with a large balance would only have stolen small amounts, and stopped when there was still a substantial amount in the account. Fraudsters tend to empty an account within a very short time, and don't leave money remaining in the account.

So I find that it's most likely that it was Mr O, or someone he permitted to use his card and details, who carried out the disputed transactions. So Barclays doesn't have to refund him.

*Barclays' closure of Mr O's account*

In Barclays' first response to Mr O's complaint, it referred to Mr O having complained about his account being closed. Mr O didn't refer to this specifically when he contacted this service. But for completeness, I'll deal with this. I find that Barclays was entitled to have a policy that

it would close accounts which were inactive. Barclays wrote to Mr O on 16 February 2023 to tell him that it planned to do this on 17 May, unless Mr O got in touch to say he'd like the account to stay open. Mr O didn't get in touch to say he'd like it kept open. This was presumably because he hadn't had the letter, but it wasn't Barclays' fault that Mr O hadn't told it about his change of address. Barclays didn't close the account until 13 July.

Barclays was also entitled to have a policy that it would only allow people to open an account if they lived in the UK, so it didn't have to reopen an account for Mr O, who lives abroad.

#### *Other points raised by Mr O*

Mr O said that as he hadn't made the transactions, it was undeniable there had been fraud. But we have to look at the evidence, rather than take either side's word for what happened. I've set out the evidence above, and my reasons for concluding that it's not likely the disputed transactions were carried out by a third party fraudster.

Mr O has made several allegations that Barclays wasn't telling the truth, and was "*going to any lengths*" to deny its responsibility for fraud. But I've considered the technical and legal evidence, and for the reasons above, these indicate that Mr O is most likely to have carried out the disputed transactions himself, so Barclays doesn't have to refund him.

I also find that the total of £800 which Barclays paid Mr O, towards his flights to and from the UK, and compensation, was more than fair in all the circumstances of this complaint, and I don't require Barclays to do more.

#### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 20 February 2025.

Belinda Knight  
**Ombudsman**