

The complaint

Mr F complains Barclays Bank UK PLC are holding him responsible for transactions on his current account he says he didn't make or authorise.

What happened

Mr F was on a night out with some friends. He and a smaller group went on to a nightclub after the initial event ended, which turned out to be closed. Mr F says there was a man waiting outside the closed nightclub, who offered to drive him and his friend to another venue similar to the closed one. Mr F and a friend accepted this offer and went with the man to the other venue, where the disputed transactions took place.

Mr F is disputing six transactions totalling £26,920, made in the early hours of 25 June 2023, which he says were made without his permission.

Payment 1	25 June 2023, 12:27am	£1,990
Payment 2	25 June 2023, 1:20am	£2,990
Payment 3	25 June 2023, 01:41am	£1,980
Payment 4	25 June 2023, 2:26am	£5,590
Payment 5	25 June 2023, 3:08am	£6,990
Payment 6	25 June 2023, 4:10am	£6,980

Barclays looked into the transactions but said Mr F was liable for them since there was no point of compromise for his PIN, and the disputed transactions had all been made using Mr F's debit card and PIN.

Mr F referred his complaint to our service. Two Investigators considered the circumstances of his complaint and both concluded that Barclays had not treated Mr F unfairly by holding him liable for the transactions. They said this because Mr F had given conflicting accounts of what had happened, and based on what he'd told us, there was no way the PIN could have been known by someone other than Mr F.

Mr F didn't accept our Investigators' findings. He said, in summary, he felt we hadn't considered the evidence properly - particularly in relation to the police report he'd provided and the medical evidence. And that if he was drugged, he couldn't have authorised the transactions under the Payment Services Regulations ("PSRs").

As Mr F didn't agree, the complaint was passed to me to decide. I issued a provisional decision. I've set out my findings again below and they form part of this decision.

Provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the Payment Services Regulations 2017, Barclays can only hold Mr F responsible for transactions he made or authorised.

Were the payments authorised?

Barclays has provided evidence that the transactions took place using Mr F's debit card and were verified by chip and PIN. So I'm satisfied that Mr F's physical card was used and his PIN was entered for each of the disputed transactions.

The last undisputed use of Mr F's debit card was at 6:19pm on 24 June 2023. But this transaction was made using ApplePay, so wouldn't have required Mr F to have entered his PIN. So there was no opportunity for someone to have observed Mr F entering his PIN earlier in the evening and then followed him to later obtain the card to use.

The first disputed transaction took place at 12:27am on 25 June 2023 for £1,990.

Mr F has given several differing accounts of the events of the evening during which the disputed transactions took place. When we asked Mr F about this, he said any inconsistencies are likely a result of the disorientation, trauma and drugging effects.

In calls made to Barclays to report the fraud, Mr F initially said he still had his debit card, but in later calls said it was lost or stolen. Mr F also told Barclays initially he didn't authorise any transactions to the venue in question. But, in his police statement he says he agreed to an initial transaction of £2,000, including the handing over of his card and disclosure of his PIN. When our Investigator asked him about this Mr F said this transaction was made on his credit card, which had a different PIN to his debit card and said "I entered my PIN for my Barclaycard". In response to my recent questions to Mr F, he said:

"I do not recall entering a PIN at any point...If a PIN was used for any card, it was without my conscious input or consent."

So, in relation to the entering of the PIN for the credit card Mr F has given three differing responses.

In his most recent correspondence, Mr F has said there were transactions on another card which took him over his credit limit which have since been refunded. I can't see where he's ever mentioned another compromised card, just attempted but unsuccessful use of the credit card. Mr F discusses the attempted use of the credit card in a call with Barclays on 25 June 2024 – during which he was advised there were two attempted transactions, but both were declined. So I find Mr F's mention of transactions on the credit card debiting the account and being refunded strange. And, if true, begs the question as to how an unauthorised party came to know two different PINs for two different cards.

Mr F initially said he used his credit card because he wouldn't use his debit card in a bar or club. And more recently has told us he only used his credit card because he felt "deeply uneasy about the venue" and thought using the credit card would offer him some financial protection. But when the transaction wasn't successful on his credit card - along with feeling deeply uneasy about the venue - instead of leaving, it looks like he decided to make the payments using his debit card instead. I say this because his police statement talks about his "bank card" and PIN being used to make the initial transaction, rather than a credit card. Mr F has most recently told us reference to a bank card in his police statement is a "miscommunication" and he was referring to his credit card. But I don't think this can be correct. Mr F must have used his debit card and PIN, or given over the card and disclosed the PIN, at some point. There's otherwise no explanation as to how the two could have been used.

In the police statement, Mr F specifically talks about agreeing to an initial payment with the

giving of his card and PIN. There's no reference to this payment being ultimately unsuccessful. So this leads me to conclude it must have been successful, otherwise I would've expected Mr F to highlight this in his police statement. And it seems the only successful transactions took place on the debit card. So I think it's more likely than not having tried to use his credit card initially, Mr F then decided to attempt the initial payment on his debit card. Though I accept he may not recall doing so now.

Mr F has been inconsistent in his description of the type of venue in which he says the disputed transactions took place, along with other descriptions of what happened that night.

He told Barclays when he first reported the transactions that he was in a club, but the statement he gave to police describes what sounds like an office building, and Mr F goes on to describe later being in a room furnished as a bedroom, with three women. I asked Mr F to tell us, definitively, what type of venue it was. In response he said "I now describe it as a front for financial exploitation, under the guise of nightlife". So we still don't have a clear explanation from Mr F about the type of venue the disputed transactions took place in.

We also asked Mr F to tell us what that initial payment was meant to be for – and did he get what he believed he had paid for. Again, Mr F was vague in his response, saying:

"I was told the payment would secure drinks, private table service, and entertainment...Very little was actually provided in return."

In my view, Mr F has continued to be vague and contradictory in his responses, despite some direct questioning, and beyond the extent I might expect from misremembering some details. The issue of which cards were used and the nature of the venue he visited (whatever he might have believed it to be before going there) being two key areas. But this means it doesn't feel as though we're getting the full story here, and that impacts how I make my findings.

Mr F has been consistent that his PIN wasn't written down anywhere. Mr F has suggested that his phone was taken from him, held up in front of him so his FaceID could be used to access the phone and the fraudsters did something to his phone to allow them to make the transactions.

Barclays have provided Mr F's mobile banking records. These show logins one minute before the first disputed transaction and then no further logins until 4:05am, about five minutes before the last disputed transaction took place. There's no record of Mr F's debit card PIN being viewed on the app. I don't know what else Mr F is suggesting could have happened to his phone that allowed someone else to find out his PIN if it wasn't accessed via the app or otherwise stored in his phone. So I'm not persuaded Mr F's PIN was obtained from his phone.

I've also considered the possibility that, having entered the PIN for the first agreed payment, even though Mr F is sure in his most recent responses this didn't happen, Mr F was observed and his debit card was then taken from him for several hours. Or, taken and returned to him for each individual transaction over the course of several hours.

Although a significant amount was debited from Mr F's account, I would have expected a third party with access to Mr F's card and PIN – intending to steal his money - to have attempted to empty the account as fast as possible. But the transactions took place over several hours, with at least 20 minutes and sometimes an hour between them, there was a significant balance left in the account when Mr F left the venue, and there were no failed PIN attempts or further attempts to use the card between the disputed transactions which I'd usually expect to see. Nor were there any declined transactions to suggest someone else

using the card might have thought funds had run out. This suggests that these transactions were being made in exchange for something each time. It's possible the charges weren't being made clear to Mr F, were being over-inflated, or Mr F was being encouraged or pressured to pay for more than he had originally intended to, but that doesn't make them unauthorised.

So it seems there's no plausible explanation for how someone other than Mr F could have used the card with the PIN to make the transactions. At least not without him giving over the card and PIN to them voluntarily. This isn't helped by Mr F's different versions of events.

Mr F insists that he was drugged – though he made no mention of this when he first reported the fraud to Barclays. He says that any authorisation he may have given is therefore not valid. Mr F has provided a photo of his face after the incident, which he says shows burns on his lips from the drugged drink he was given at the venue. But he hasn't provided any medical evidence to confirm the presence of drugs in his system. And I don't think the photo alone substantiates this. In any event, authorisation for the purposes of the Payment Services Regulations doesn't require Mr F to have been aware at the time or remember now what he was authorising. Even if Mr F was under the influence of something, and/or was being tricked into authorising payments, he would remain responsible for them if he completed the transactions himself – which I'm persuaded he did.

Mr F's police statement refers to messages he says he received from one of the women present at the venue, three weeks after the disputed transactions. We asked Mr F to provide those messages to us, but he initially said he didn't think they were relevant. The messages were provided to us later, in response to my recent questions to Mr F. Having reviewed them, I can see that Mr F asks some questions about the woman's involvement in his drugging and disputed transactions – which she claims to have no knowledge of. She describes the place they met as a "strip club". The woman claims Mr F told her his social media account name and that's how she was able to message him weeks after. She asks Mr F if he'd be interested in meeting up again, which he said he was. No firm plans were made in the message chain I've seen, but Mr F does ask for the woman's phone number and says he'll add her on WhatsApp. I find it highly unusual for a fraudster – or someone who must have at least had some knowledge of the fraud -- to seek out and make contact with their victim a number of weeks later, particularly since it risks them being more easily identified if the victim had reported matters to police, which Mr F did.

The only other potential scenario I can see is that what Mr F told the police about giving over his card and PIN is true and that, perhaps, someone then continued to use his card without his knowledge. But, if that were the case, it would still be fair for the transactions to be treated as authorised given he'd given someone else permission to use his card. Even if they weren't treated as authorised, Mr F still wouldn't be due a refund under the PSRs or the terms and conditions of his account because he would have intentionally disclosed his PIN and handed over his card.

Overall, I find it more likely than not Mr F authorised the disputed transactions, albeit he may not have been fully aware of what he was doing, how much he was being charged, and was more likely than not being tricked in some way.

Should Barclays have intervened in the payments?

Generally, financial businesses should follow their customers' instructions in relation to legitimate payments and, as I've already explained, I've found Mr F did instruct Barclays to make these payments. However, there are some situations in which a bank should reasonably have looked more at their customers' payments before allowing them to proceed. So I've also considered whether Barclays should have intervened in any of these payments.

I've considered the usual account activity on Mr F's account in the 12 months prior to the disputed transactions. He regularly made payments for over £1,000 out of this account and had some regular payments debiting the account for between £2,000 and £4,000. So I don't think it was unusual for Mr F to make large payments from his account. However, I do think it would have been unusual for Mr F to have made £26,920 worth of card payments from his account in about four hours. Given Mr F's usual account activity, I think the £5,990 payment ought to have prompted an intervention by Barclays.

Had Barclays intervened in this payment either by blocking the payment itself, Mr F's debit card and/or contacting him, I think this would have prevented further transactions taking place. Either because Barclays wouldn't have been able to reach Mr F, or because if they had, his attention would have been drawn to the size of the transactions he was authorising.

So I think Barclays should refund some of the payments Mr F made.

Contributory Negligence

I've gone on to consider the actions of all the parties involved in these transactions. There's a general principle that consumers are responsible for their actions. So I've considered whether that means Mr F should take some responsibility for the transactions in this particular case.

I can't say exactly what happened when Mr F was making the payments. I'm satisfied he authorised them and that he was probably tricked or distracted in some way. But I'm persuaded he was more likely than not involved in the transactions. That may have involved alcohol or other substances, though there's little evidence to confirm what was happening. But I consider it fair and reasonable to take his own actions and involvement into account, and this leads to a reduction in the redress Barclays ought to pay. I think a deduction of 50% for contributory negligence is appropriate in the circumstances.

Current position of Mr F's account

When Mr F reported the disputed transactions to Barclays, they temporarily credited Mr F's account with the value of them while they investigated. This is what I'd expect a financial business to do.

Having made the decision to hold Mr F liable for the transactions, Barclays removed the temporary credit on 18 August 2023, after notifying him that they would do so. But by this time, Mr F had transferred £22,500 to another account. So Barclays removal of the refund left Mr F in an overdrawn position. Barclays are entitled to do this under the terms and conditions of the account and they've been charging interest on the overdrawn balance, again in line with the terms and conditions.

My provisional decision

For the reasons I've explained, I plan to uphold Mr F's complaint in part.

To put things right, I intend to require Barclays Bank UK PLC to:

- *Refund 50% of the payments from Payment 4 (above) onwards. Barclays should remove any overdraft interest and charges associated with this refund amount.*

Responses to my provisional decision

Barclays said they agreed to my provisional findings.

Mr F didn't agree. I've summarised his response as follows:

- Mr F believes the burden on Barclays to show he authorised the payments has not been met. And incorrect assumptions had been made regarding authorisation under the Payment Services Regulations.
- He said inadequate weight had been given to the evidence of duress, drugging and coercion.
- Mr F considers Barclays mishandled the investigation and failed to prevent the transactions from debiting his account.
- Mr F's feels compensation for the serious emotional, financial and reputational harm he'd been caused is appropriate.

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.

While I've considered all of Mr F's points in response to my provisional decision. I've focussed here on the ones most relevant to the outcome of his complaint. That's not intended as a discourtesy but reflects my informal role in deciding what a fair and reasonable outcome is.

Mr F is correct that the burden of showing the transactions were authorised is on Barclays and that use of the card and PIN alone, aren't enough to demonstrate authorisation.

Barclays has provided evidence showing the transactions were made using Mr F's card and PIN. But crucially, as I set out in my provisional decision, there's no plausible explanation for how the PIN came to be obtained by an unauthorised person. So while Mr F's concern is that I've focussed, incorrectly, on use of the PIN – it's important because the transactions could not have taken place without it. And for the reasons set out in my provisional findings, I'm not persuaded someone else could have obtained the PIN in the circumstances Mr F has described.

So because I'm not satisfied anyone else could have known the PIN, this means the transactions must have been made by Mr F – or by someone else who had been given the PIN by Mr F - and so I find he consented to the payments.

Mr F has maintained throughout that he was drugged. He's now mentioned duress and coercion. I can't see that he's described in any detail in what specific way he thinks he made the transactions under duress or coercion. But, as I said in my provisional decision, the Payment Services Regulations don't require Mr F to have been aware of or remember now what he was authorising. And similarly, even if Mr F was forced to make the payment in some way, this wouldn't automatically entitle him to a refund. So I don't think what he's now said in this regard makes a difference to the overall outcome of his complaint.

Mr F says he's been caused serious emotional, financial and reputational harm because of what's happened. Given the circumstances of the transactions and the amount of money involved, I don't doubt that this has been a difficult experience for Mr F. If Mr F was tricked into making the payments under some false pretence or persuaded to spend considerably more than he initially intended by people taking advantage of him, then by its very nature,

that would be distressing and understandably, have an ongoing impact on him. But it wouldn't be fair or reasonable to say Barclays is responsible for this. And, although Mr F feels Barclays mishandled the investigation into the payments, I don't agree. Based on what I've seen, it acted promptly when Mr F reported the transactions giving him a temporary refund. It reviewed Mr F's fraud claim within about four weeks and his subsequent complaint in about two weeks. As I don't think the material distress and inconvenience has been caused by Barclays, I don't agree that a payment of compensation is appropriate.

In terms of the financial loss, I found Barclays ought to have intervened in the later payments Mr F made and had they done so this would likely have prevented those payments being made. Mr F wants any reference to contributory negligence removed, but having considered everything again – I'm still satisfied that Mr F's own actions in this matter contributed to the loss he's experienced and that it's fair and reasonable in the circumstances for this to mean a deduction of 50% is appropriate.

Overall, I remain satisfied that Barclays should have intervened from payment 4 above and should therefore refund 50% of those payments, to take into account Mr F's own actions.

My final decision

For the reasons I've explained, I uphold this complaint in part.

To put things right, I require Barclays Bank UK PLC to:

- Refund 50% of the payments from Payment 4 onwards. Barclays should remove any overdraft interest and charges connected to this refund amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 25 July 2025.

Eleanor Rippengale
Ombudsman