

The complaint

A limited company I will refer to as K complains that Barclays Bank Plc (trading as Barclaycard) has declined to refund them for transactions on their credit card that they say they didn't make.

K is represented by Miss B, a director.

What happened

The background to this complaint is well known to both parties, so I will not repeat it in full here. But briefly, in February 2024 Miss B contacted Barclaycard to say she didn't recognise approximately £17,000 worth of transactions on K's credit card. All the transactions were made using Apple Pay, between October 2022 and February 2024.

Barclaycard declined to refund K, saying that the Apple Pay device had been created using a one-time passcode (OTP) sent to Miss B's registered mobile number. Dissatisfied with this Miss B referred K's complaint to our service.

Miss B told us:

- She had not agreed to set up Apple Pay on any device
- Her phone was often left unlocked in K's premises so staff could access it
- In May 2023 K had dismissed several employees for stealing from the company
- She thought one of the dismissed staff members had been using the Apple Pay device
- She had only discovered the fraud when K's accountant had queried why they were paying so much each month towards the credit card

Barclaycard told us:

- They believe the initial Apple Pay registration in October 2022 was genuine
- The Barclaycard app and Apple Pay were both set up using information and codes sent to Miss B's genuine contact details
- Miss B originally only claimed the payments after May 2023 were fraudulent, and only later claimed the payments before this as fraudulent
- That Miss B as the principal cardholder did not take reasonable steps to protect her account from fraud

Our investigator felt the complaint should succeed. Barclaycard disagreed with this and asked for an ombudsman to decide. As such the complaint was passed to me to decide.

Upon review I issued a provisional decision that said:

The relevant regulations here are the Payment Services Regulations 2017 (PSRs). These broadly say that if a payment service provider can only make a payment from their customer's account if it has been authorised correctly. And that generally unauthorised transactions should be refunded – subject to certain caveats, such as where the account

holder as either deliberately or with gross negligence failed to keep their security information safe.

But I've also taken into consideration the legal concept of agency – where a person allows another person to act on their behalf, such as by making payments for businesses. The customer in those instances could potentially still be bound by the actions of their agent. In this case Miss B was the only cardholder, although from what she's told us she would allow other staff at K to make payments with the card.

I see that the key point here is how K's card was set up for Apple Pay. To set up this, the user would have needed to use the Barclaycard app. And Barclays have demonstrated that the app was set up in April 2022, using the same contact details Miss B has supplied to our service. The Apple Pay device was then set up several months later in October 2022, and there are several days between the set up and first spend on the Apple Pay device. These don't strike me as the actions of an opportunistic thief.

Looking through the transaction history of the Apple Pay payments; I can see that broadly the transactions are in line with what I'd expect to see for K's business. There are payments to suppliers and wholesalers, generally local to K's place of business. I can't know precisely what was bought in each of these transactions, but it certainly doesn't look out of character or indicative of fraud. I'm minded that this is genuine spending, which more likely than not benefited K.

Up to May 2023 it doesn't seem likely these are payments that would be considered fraudulent. And I think it's important to note that when Miss B originally reported the fraudulent transactions, she only included those made in May 2023. Which is after she says staff members at K were dismissed because of other concerns related to theft from the business. There's a suggestion an individual may have made the payments, and then claimed they'd come from personal funds and reclaimed these from K. I've not seen any compelling evidence this was the case. In any event, I'd still conclude that the payments using Apple Pay were authorised.

The transactions between May 2023 and February 2024 are clearly of a different pattern and involve mostly payments for taxis and food delivery. But they are all made with the same Apple Pay device seen previously. I accept that these likely aren't legitimate business transactions. But it's unclear why the Barclaycard account wasn't looked at by Miss B or anyone else at K at the time. Particularly as they previously had concerns about the conduct of several staff members. Instead, it seems that the account was left to run for months without intervention – which again leads me to conclude that someone had previously been authorised to use and manage K's Barclaycard account.

I'm not persuaded that the setting up of the Apple Pay was unauthorised. I don't see that it's plausible that someone would maliciously download the app, wait several months to secretly set up Apple Pay, then carry out regular business spending, before deciding to use K's account for their own personal spending. I'm not persuaded that the explanation of Miss B leaving her phone to be used by staff members is a persuasive explanation of what happened here.

I see that it's more likely than not that someone working with K was allowed to add the card to their device, to carry out legitimate business activity. And then for whatever reason this wasn't revoked with Barclaycard, and they continued to spend. In these circumstances I don't see that it's unreasonable for Barclaycard to continue to treat the payments as authorised, and as such they're not obliged to provide a refund.

I've gone on to consider whether there was anything Barclaycard should reasonably have done to prevent any of the transactions – although as I've noted the transactions before May 2023 are in line with what I'd expect to see. And after this point, while there certainly are a lot of transactions they are of relatively low value and being carried out by a known device. And through this period the account was still being paid off – when they may well expect any unknown or unrecognised transactions to be disputed before payment made. So, I'm not persuaded that Barclaycard have done anything wrong by processing these transactions, and I'm not minded that it would be reasonable to expect them to refund K.

I appreciate this will be disappointing to Miss B, but I don't see that Barclaycard have done anything wrong by declining to reimburse K. I'm not minded to ask them to do anything further.

Miss B didn't agree with the provisional decision. She said, in summary, that the investigations by K, Barclaycard and the police had determined it was fraud. She raised a number of points about the evidence relied upon, and she said the transactions from 2023 should have been treated as suspicious and blocked. She also raised an issue with the credit limit on the card being increased.

As the deadline for responses has now passed, and I have considered the evidence afresh.

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, I remain satisfied with the conclusions reached in the provisional decision.

Miss B has asked for a response to each point she raised in response to the provisional decision. But I'll focus on what I consider to be key points to reaching a fair and reasonable outcome. This isn't intended to be a discourtesy, but this is in line with our service's remit to be a quick and informal alternative to the court service. I'd like to assure her I've read and considered all the evidence she has referred to in reaching my decision.

I'd clarify that my findings in the provisional decision are that K has likely been the victim of theft here. But being the victim of theft isn't the key determining factor into whether a bank should be responsible for refunding their customer. I've taken on board the information Miss B has given us from their delivery app platform and their suppliers – but ultimately, I'm not persuaded there is strong evidence this is related to the initial set up of the Apple Pay device.

We know from the technical data that the Barclaycard app was set up on a phone several months before any disputed transactions began. And we know the Apple Pay device was set up a few days before the disputed transactions. But between October 2022 and May 2023 the transactions are almost entirely to wholesalers and suppliers, in line with what I'd expect for K's business. I remain satisfied it's more likely than not these transactions were legitimate business transactions, for the benefit of K. These don't come across as the actions of the fraudster – instead up to May 2023 the account was being used as you would expect a business credit card to be.

Miss B has explained that she was away from K's business for significant periods in 2022 and 2023. So, this lends credence to the idea that someone else was left in charge of purchasing for K. So, I remain satisfied that it was more likely than not that this person had authority to have K's Barclaycard loaded into their Apple Pay wallet, considering Miss B has said she kept the card. I see that it's reasonable for Barclaycard to treat these transactions

as authorised.

After May 2023, I've accepted that the pattern does change. And Miss B has explained after this is around the time K dismissed several staff members for other issues. So, I see that it's more likely than not a now former staff member continuing to use the card in their Apple Pay wallet. But as I'm satisfied that they likely originally had authority to load the card to the wallet, and this wasn't revoked with Barclaycard, I see that it's not unreasonable for Barclaycard to also treat these as authorised as well. So, in the circumstances I don't reasonably see that Barclaycard have an obligation to reimburse K for these.

I did consider whether Barclaycard ought reasonably to have questioned any of the transactions after May 2023 or taken steps to prevent them. But overall, I'm not persuaded that this would have been necessary – the transactions were all for a relatively small amounts and made from a device that had been making payments for several months without any reported issues. And K continued to make repayments to the card debt, when I would reasonably expect them to highlight any concerns at the earliest available opportunity.

Miss B has also raised concerns about Barclaycard automatically raising K's credit limit – although I've considered this, I see that this is a separate issue to the disputed transactions. So, I don't see it's appropriate I make a find on this until Barclaycard have had the chance to respond directly to K.

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 K to accept or reject my decision before 2 March 2026.

Thom Bennett
Ombudsman