

Complaint

Miss T has complained that Barclays Bank Plc won't refund transactions on her account, which she says she didn't make.

Background

Miss T said she didn't receive a replacement debit card. She subsequently found out that the replacement card had been used multiple times for purchases totalling £2,758.42.

After reviewing this complaint, I issued a provisional decision, setting out the events leading up to this complaint and how I thought best to resolve it. I decided to uphold Miss T's complaint and I recommended that Barclays refund the disputed transactions. I've attached a copy of my provisional decision. It forms part of this final decision.

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Response to my provisional decision

Miss T accepted my provisional decision.

Barclays didn't agree with my conclusions. It replied as follows:

- there's no evidence of how a third party got hold of the PIN.
- The PIN was a random 4-digit PIN. It wasn't chosen by Miss T and so it wouldn't have been guessable.
- Some of the disputed transactions were payments to merchants whom Miss T used for genuine transactions, namely Transport for London and KFC.
- The pattern of disputed transactions matches that of genuine transactions with payments for meals out followed by grocery transactions. This represents the normal usage of the account.
- If Miss T did not have access to a debit card, then how did she continue to buy the essentials or travel around London? There is no evidence of funds being withdrawn from the account in branch to support her day-to-day life.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, including Barclays' observations on my provisional decision.

Having done so, my decision remains the same. However, I will respond to Barclays' observations.

I understand Barclays' concern about the PIN and I have given it serious consideration. However, despite Barclays saying it didn't issue a new PIN, I think the situation is far from clear.

I've now seen the letter Barclays sent to Miss T, dated 31 October 2018. In that letter, Barclays says:

'You have stated in your disclaimer you did not receive the card and the personal identification number (PIN). The card and PIN were despatched on different dates using different delivery routes, meaning the only place they could have come together would be your property, the address on our records...'

Barclays told us it didn't issue a new PIN and its record prove this. This letter says differently. I've considered whether this was a template letter, with standard paragraphs, but I've decided it couldn't be: this is a letter which has been sent out after a review and it's specific to Miss T's complaint. I can't imagine why Barclays would use standard paragraphs in its reasoning, especially where the PIN evidence is crucial.

I don't think it's certain a new PIN wasn't issued. I've also noted that in Miss T's telephone call with Barclays, the adviser says she can see that the third party 'was swiping and signing instead' (meaning no PIN was needed). I thought, on balance, a PIN must have been used, at least for some transactions. Again, the evidence surrounding the PIN use is unclear and, therefore, unreliable.

Barclays also said Miss T used the same merchants for the disputed transactions and genuine ones: Transport for London and KFC. I have to say this is hardly evidence of similarity, both being commonly used merchants by a large percentage of the population and especially students. And I note there was only one payment to KFC amongst the disputed transactions.

Again, the so-called transaction pattern of meals followed by grocery shopping is far from unusual. Besides, none of the merchants used for the disputed transactions appear amongst the list of genuine transactions in the October to November 2018 statements (save for Transport for London and KFC). And the statements don't show in what order the genuine transactions occurred.

Miss T also told us that the average daily spend on disputed transactions was around £240 daily, whereas the average daily spend by her on genuine transactions in October and November 2018 was around £26 daily. Looking at the statements, I can see the genuine spend is modest.

So I don't consider this a similar pattern at all. In fact, the pattern is very different.

Lastly, Miss T told us she used another bank account when she didn't have the Barclays' debit card. She sent us a copy of the statement for that account early into our investigations. It shows she was using this other account during September 2018. The transactions are similar to the genuine transactions on her Barclays' account for October and November 2018.

Based on the evidence, I don't consider that Miss T received the replacement card or that she authorised the disputed transactions. I think it's fair and reasonable for Barclays to refund the disputed transactions.

My final decision

My final decision is that I am upholding this complaint.

I am asking Barclays Bank PLC to:

- refund the disputed transactions totalling £2,758.42
- pay 8% interest on this amount from the time the transactions left the account until they are refunded
- pay £100 for the distress and inconvenience experienced by Miss T for the loss of her money and the time taken to recover it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 15 June 2020.

Razia Karim
ombudsman

Copy of Provisional Decision

Complaint

Miss T has complained that Barclays Bank Plc won't refund transactions on her account, which she says she didn't make.

Background

Miss T was a university student until June 2018. She returned to her home, outside the UK, at the end of the academic year. She came back to the UK on 29 August 2018, where she began further studies.

She said her debit card stopped working when she returned to the UK so she called the bank. She discovered that Barclays had sent her a replacement card on 10 August but it had posted it to her previous address. Barclays ordered her a new card. The second replacement card was despatched on 10 September to her new address.

Miss T heard nothing further.

On 28 September, Miss T received a text message from Barclays. It told her that her card had been declined because she didn't have enough money in her account. Yet, she had transferred £3,000 from another account a few weeks earlier. She called the bank and found out that the second replacement card had been used multiple times for purchases totalling £2,758.42.

Miss T told Barclays that she'd never received the second replacement card and that she hadn't made any of the payments. She asked Barclays for a refund.

Barclays decided not to refund her. It said the payments were made with the replacement card, which it had sent to her new address, and the PIN. It said it hadn't sent her a new PIN. And, as only she knew the PIN, it concluded that she had authorised the transactions.

Miss T wasn't happy with Barclay's decision so she brought her complaint to this service.

The investigator didn't uphold her complaint. He couldn't see how a third party would know her PIN and so concluded it was more likely than not that Miss T had authorised the transactions.

Miss T didn't agree with the investigator's view. She says Barclays has been negligent for issuing a replacement card when she didn't need one. She has asked for an ombudsman's final decision.

My provisional findings

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The investigator wrote a detailed view that sets out in full the facts, the transactions, the relevant regulations and the evidence. Both Miss T and Barclays have read the investigator's view, so I won't repeat every detail here, only those which form the basis of my decision. However, I can assure both that I've read the file, including comments and evidence.

Having done so, my review of the evidence has led me to a different conclusion. I'll explain why.

In short, Barclays is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). Miss T says she didn't make the disputed transactions and is seeking a refund of them. So, my primary concern is to come to a view about whether or not I think she authorised them.

Having reviewed Barclays' audit reports, I'm satisfied the genuine replacement card and PIN were used in order for the disputed transactions.

But the regulations relevant to this case say that is not, on its own, enough to enable Barclays to hold her liable. So, I also need to think about whether the evidence suggests that it's more likely than not that Miss T consented to the transactions.

Miss T says she never received the second replacement card. She has explained that she was living in student accommodation with four other students. She said letters were posted directly through the letterbox to the flat and parcels were delivered to the reception. So, the opportunity existed for a third party to intercept her mail.

However, Barclays says Miss T is linked to the transactions by the PIN evidence. And even if a third party stole her card, there's no clear evidence of how they knew the PIN.

The bank's records confirm it didn't send a new PIN with the second replacement card. However, Miss T said Barclays wrote to her on 31 October saying '*[T]he card and PIN were dispatched on different dates using different delivery routes meaning the only place they could have come together would be your property, the address on our records (as at the top of this letter).*'

Unfortunately, I haven't seen a copy of this letter. Based on the available evidence I can only conclude that Barclays didn't send a new PIN with the second replacement card. If Miss T can send me the letter, I might revise my position.

It's difficult to see how a third party got hold of her PIN. But the PSRs say the card and PIN are not, on their own, enough to hold her liable.

I've looked at the locations, timings and nature of the disputed transactions. They are very odd. Miss T was living in north east London at the time. The transactions were made in north, north east, and east London. Although they were made in neighbouring boroughs, the vast majority of transactions were not made in Miss T's local area.

Many transactions occur in local grocery shops in north London. There is no good reason why Miss T would travel from her local area to these areas for grocery shopping in local shops.

Also, the timings show the person was constantly moving from one area to another and often in the early hours of the morning. For example, on 17 September, the card was used at 00:50 for £99 at a petrol station in north London. There was a second transaction for £23 at 00:54 at the same petrol station. Miss T said she doesn't own a car. At 2:29, it was used on public transport. At 2:50, there was an unsuccessful attempt to use it in a shop. At 3:55, there was another unsuccessful attempt to use the card at a petrol station in another borough in north London. At 11:20, there was an unsuccessful attempt at a supermarket in yet another borough.

On 13 September, the card was used in east London at 22:43. It was used next on 14 September at 9:47 to pay for travel. By 10:11, the person was in north London. It's not possible to get from the location in east London to the location in north London, within that time.

And there are successive payments to small grocery stores, as I've mentioned above.

The transactions are not for expensive goods. They are not multiple cash withdrawals. They don't occur rapidly within a short space of time. However, they are still very odd. I don't think Miss T would have been in these areas, at these times, making these transactions. And I don't consider I can rule out fraud.

So, despite the PIN, I'm not convinced that Miss T authorised these transactions and I am upholding her complaint.

In reaching my decision, I have also taken into account regulation 73 of the Payment Services Regulations 2017 which says:

...(2) The payment service provider bears the risk of sending to the payment service user a payment instrument or any personalised security credentials relating to it.

I also note that regulation 72 says:

(1) A payment service user to whom a payment instrument has been issued must —

...(b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument...

The starting point, therefore, is that Barclays remains liable for any loss arising from an undelivered card unless:

- the consumer knew the card had been lost; or
- long enough had passed for them to realise, beyond any reasonable doubt, that the card wasn't going to arrive;

and they then unduly delayed to notify the bank.

I don't think there is emphatic evidence here that Miss T knew the card had been lost.

Also, the card was ordered on 10 September. Miss T found out about the disputed transactions on 29 September. While that is an interval of three weeks, I don't think it's a long enough interval for her to realise beyond reasonable doubt that the card wasn't going to arrive. So I don't think regulation 72 applies.

I also note that there were several declined attempts to use the card. Had Miss T been using the card, then I would have expected her to call the bank when it was declined. However, there were no calls to the bank during this time.

In these circumstances, I don't consider that Miss T received the replacement card. I think it's fair and reasonable for Barclays to refund the disputed transactions.

However, this is a provisional decision and it might change depending on any further evidence I receive. I think it's important that Miss T understands this.

My provisional decision

My provisional decision is that I am upholding this complaint.

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