

The complaint

Mr R is a sole trader. He complains that Barclays Bank Plc (trading as Barclaycard) is holding him liable for chargebacks totalling nearly £6,500.

What happened

Barclaycard provides merchant acquiring services to Mr R's business, allowing him to take payments from customers using plastic cards.

In December 2022 Mr R was contacted by a person who later turned out to be a fraudster. I will call that person Mr N.

Mr N wanted to purchase several flights from Mr R's business. After putting the first payment (of around £2,700) through his terminal, Mr R called Barclaycard to explain that he had some doubts about the transaction. I will discuss that call in more detail later in this provisional decision, but in brief both parties accept that Barclaycard's agent told Mr R that once a payment had been authorised the funds would be paid to his bank account and could not be charged back.

Mr R later processed further transactions for Mr N. All the transactions were done on a Card Not Present (CNP) basis.

The owner of the card Mr N was using later made chargeback requests to their card issuer. Those requests were successful, and Barclaycard told Mr R that he was liable for the chargebacks. I understand that both Mr R and Barclaycard accept that Mr N was not the genuine holder of the card Mr N was using. That means Barclaycard could not have defended the chargeback under the Card Scheme Rules.

Mr R complained, pointing out that Barclaycard's agent had told him that authorised transactions could not be charged back. Barclaycard credited £750 to his merchant statement to apologise for the misinformation he had been given, but it said that the chargebacks stood.

Mr R was not satisfied with Barclaycard's response to his complaint and referred the matter to our service. One of our investigators looked at the matter and concluded that Barclaycard and Mr R should be held equally liable for the loss. Our investigator said that in addition to the £750 credit for poor service, Barclaycard should also pay Mr R half the amount of the chargebacks plus interest at 8% per year simple.

Neither party accepted our investigator's conclusions.

Barclaycard said that Mr R had signed its merchant services agreement and been provided with a copy of the relevant Terms and Conditions. The Card Scheme Rules relating to the risks of CNP transactions are clearly stated and are also readily available on its external website. It therefore does not agree that it should have any liability for the chargebacks. It recognised that its customer service was poor, but it considered that the £750 payment it had already made was sufficient compensation for that poor service.

Mr R thought that Barclaycard should be liable for the whole of the chargebacks, and not just for half of them. Briefly, he said:

- He considers that the losses suffered here are completely attributable to weaknesses in Barclaycard's controls concerning CNP transactions. He said Barclaycard's staff have informally admitted that to him over the phone, and it is supported by Barclaycard's decision to offer him £750 (which he believes is the maximum the staff involved were able to award).
- He contacted Barclaycard several times before paying for the flights in question and was told that if the payments were authorised then they were guaranteed and there was no chance of chargeback. He relied on that information in good faith, and it is the sole reason for the losses. Once the chargebacks had been initiated, he was told what he now understands to be Barclaycard's true position – the authorisation shows only that the account has sufficient funds, and the card has not been reported stolen.
- Barclaycard did not draw his attention to its Terms and Conditions, and he was not offered a copy to consult for himself. But even if he had read through the Terms and Conditions, he should still have been able to ask Barclaycard's staff if he was unsure of anything – and he should have been able to rely on the information they gave him.
- He does not see what else he could have done in these circumstances, other than to refuse to conduct the business at all.
- He has many concerns about the conduct of Barclaycard and other industry participants, and he believes there are many shortfalls and weaknesses in the authorisation process generally. He would like his complaint to be used as a test case to draw attention to the problems associated with CNP transactions more generally.

Our investigator was satisfied that he was not going to be able to resolve this complaint informally, so he referred the matter to me.

My provisional decision

I issued a provisional decision on this complaint, and said:

"My provisional conclusions are:

- The agreement between Barclaycard and Mr R means that Mr R is liable for chargebacks if he chooses to accept CNP transactions.
- Nevertheless, Barclays' agent told Mr R that once a payment had been authorised it could not be subject to a charge back. She was wrong to say so.
- However, in the overall circumstances I don't think Mr R relied on the agent's incorrect information – and even if he did, I don't think it was reasonable for him to have done so.
- Overall, I think Barclaycard has already done enough to resolve this complaint. I don't intend to order it to pay any additional compensation.

I give more details about my findings below.

What did the agreement say?

Mr R's business has had a merchant acquiring agreement with Barclaycard for a very long time. The agreement may even pre-date Mr R's involvement with the business (which he took over from another person), but that is unclear. Barclaycard says the relationship between it and Mr R's business dates back to 1994, and that it has sent relevant information every time it has updated its terms and conditions.

I haven't seen the original agreement, and it appears that Mr R may not have seen it either. But the Terms and Conditions relevant to this complaint are the ones Barclaycard issued in 2018. Mr R may not have read that document, but I am satisfied that he would have known that Barclaycard would not have processed any transactions for his business without an agreement in place. I am also satisfied that Barclaycard would have provided the document to him at any time if he had explicitly asked for it, and it would also have been available on Barclaycard's website. In the circumstances, I consider that both Mr R and Barclaycard were bound by Barclaycard's 2018 terms. Those terms made clear that in the event of a successful chargeback, it is the merchant (and not Barclaycard) who will be liable.

Barclaycard also published a procedure guide, which made clear that CNP transactions carried additional risks – and explicitly said that authorisation does not guarantee payment. Authorisation only confirms that there are enough funds available in the account, and that the card has not been reported as lost or stolen. Barclaycard explains in its guide that it cannot guarantee that the person presenting the card is the genuine cardholder, and so the merchant may be at risk of chargebacks following fraudulent transactions.

I acknowledge that Mr R says he is not at fault, and that he believes Barclaycard's poor controls surrounding CNP transactions have caused this problem. But so far as the card processing is concerned, I don't think Barclaycard has done anything wrong either. All Barclaycard did was process transactions that were entered into a terminal. I think Barclaycard is right to say that it cannot guarantee that a person presenting a card has the authority to do so; I can think of no way for Barclaycard to investigate that issue.

In my view, the person at fault here is the fraudster, and not Mr R or Barclaycard. If it was possible to find the fraudster, then it might also be possible to sue him for the amount of the chargeback. But the fraudster cannot be found, and so somebody else must bear the loss. I understand that Mr R is not suggesting that the innocent cardholder should bear the loss, nor is he suggesting that the card issuer should pay. His position is that Barclaycard should pay. But that is not what the agreement between Mr R and Barclaycard says about chargebacks following fraudulent CNP transactions.

I note that there is nothing unusual about Barclaycard's terms. I am not aware of any merchant acquirer which accepts liability for chargebacks following fraudulent CNP transactions. Barclaycard's position on this point is standard in the industry. I accept that Mr R thinks that Barclaycard should take a different position, but when reaching my findings I am required to take into account what I consider to have been good industry practice at the relevant time. Here, my view is that Barclaycard's position does represent good industry practice.

My starting position is therefore that the agreement between Mr R and Barclaycard makes Mr R wholly liable for the chargebacks. But I understand why Mr R might think

his later telephone call with Barclaycard should change that position, and so I have considered that call carefully.

Did Barclaycard's agent give Mr R the wrong information?

Everyone accepts that Barclaycard's agent gave Mr R the wrong information during a telephone call, but I cover the point for completeness.

Barclaycard has provided me with the call between Mr R and its agent in December 2022, and I have listened to that call.

The agent said "it's been authorised, and the amount will definitely go through". Mr R asked "and it can't be taken back again?" and the agent said "no". Mr R then clarified "so it's been authorised, I'm definitely going to have it, and it can't be taken [back]". The agent confirmed "no, no it won't". Mr R clarified again "even if there's a chargeback?" and the agent said "no, it won't take the amount, because normally to chargeback or do the refund it needs your card machine to be there, because from the card machine only chargeback and refund process goes on unless it won't go through (sic)".

The agent's statements were in my view very clear – but they were the opposite of what was in the contract between Mr R and Barclaycard. I am therefore satisfied that the agent was wrong to say what she did.

As an aside, Mr R has said there were many calls, but Barclaycard has only provided me with one, which is clearly about the first transaction Mr N made. I have assumed the additional calls Mr R mentions must have been before the one I have listened to, and are therefore not relevant to my findings – but if Mr R disagrees about that, I ask him to provide as many details as he can about when the calls were made, the telephone number he would have used, and why he believes they are relevant. I would then be able to ask Barclaycard to search its records for any additional calls. (I note that if Mr R did call Barclaycard again after the call I have listened to, that might cast doubt on any suggestion that he relied on the agent's misleading information – it seems unlikely that he would have felt the need to call again if he believed that the information she had provided was accurate.)

Was it reasonable for Mr R to rely on the agent's comment?

I am satisfied that Mr R received conflicting information:

- The contract between Mr R and Barclaycard (which he might have read several years before this incident, if at all) said that Mr R would be liable for chargebacks if a CNP transaction was fraudulent.
- Barclaycard's agent (speaking at a point where Mr R could still have chosen to simply refund the transaction) said that that Mr R would not be liable.

Our investigator's suggestion was in effect to split the difference, and say that Mr R and Barclaycard should each be liable for half of the chargeback. But in the particular circumstances of this complaint – and having listened carefully to the whole of the call between Mr R and Barclaycard's agent – I don't think that would be a fair result. I don't think Mr R relied on the agent's incorrect information, and even if he did, I don't think it was reasonable for him to have done so.

Looking firstly at whether Mr R in fact relied on the agent's incorrect information, the comments Mr R makes in the call suggest to me that he was prepared to go ahead with the transaction because he was satisfied that it was genuine. Whilst he referred to several "flags" or "warning signs", ultimately he said "I'm just being a little bit cautious, I think the gentleman [Mr N] is probably legitimate". That suggests that although Mr R was reassured by the agent's incorrect information, his reason for going ahead with the transaction was that he was satisfied it was genuine.

However, even if I am wrong to say that Mr R did not rely on the agent's incorrect information, overall I don't think such reliance would have been reasonable.

I recognise that there is conflicting evidence on this point, with some factors suggesting that it was reasonable for Mr R to have relied on the agent's misinformation and some suggesting that it was not. I have taken into account:

- Barclaycard was the expert here, and Mr R was not. Mr R ought to have been able to rely on what Barclaycard told him.
- Barclaycard's agent told him explicitly that once a payment had been authorised it could not be charged back. But I don't think it would be fair for me to consider that comment in isolation. Instead, I think I should consider it in the overall context of the call between Mr R and Barclaycard's agent. I note that she told him several times that she could not answer his question about chargebacks. She said she was a member of its "technical team" and that Mr R would need to speak to its "finance team" for an answer. However, the finance team were not available at the weekend, so she said repeatedly that the finance team would be able to give him the correct details on the following Monday. She also said that all she was able to tell him was whether a transaction had gone through, she couldn't give any more details than that, and that "I won't be able to assist regarding [whether something is a] genuine transaction". Whilst the agent should not have gone on to say what she did, taking the conversation as a whole I think Mr R ought to have realised that she simply didn't know the correct answer to his question.
- Before giving Mr R incorrect information, the agent told Mr R that if he had any doubts about the transaction then he should not go ahead with it.
- Mr R was an experienced businessman, with many years of experience of accepting payments from plastic cards. Whilst he has said he has never had a fraudulent chargeback before, I am satisfied that he must have known that was a risk. I don't think he would have made a phone call to ask about chargebacks if he hadn't at least suspected that he might be held liable in some circumstances.
- The documents Barclaycard sent to Mr R over the years made clear that he would be liable for chargebacks on fraudulent CNP transactions. He may not have chosen to read them, but I consider it is likely that they were available to him. Even if they were not available to him, either because he took the business over from someone who did not retain documents or for any other reason, then I think it would have been reasonable for him to have asked Barclaycard to explain the contractual terms between them.

I put considerable weight on the fact that Barclaycard's agent repeatedly told Mr R that she was a member of Barclaycard's technical team and could not answer his

question about whether the transaction could be charged back. I acknowledge that she then went on to give the wrong answer to his question. But in the overall circumstances, I don't think it was reasonable for Mr R to rely on the information she gave him.

Mr R's wider concerns regarding CNP transactions

I have noted Mr R's wider concerns about the risks associated with CNP transactions. I understand that he believes Barclaycard should be liable for the chargebacks here in any event – regardless of what its agent said, or whether it was reasonable for him to rely on the information she gave him. He considers that the losses suffered here are attributable to general weaknesses in Barclaycard's (and potentially the wider industry's) processes in relation to CNP transactions.

I cannot address Mr R's wider concerns in any detail. As an ombudsman – and not a regulator – my role is limited to determining the individual complaints that have been referred to me.

Mr R is right to say that the only way he could have protected himself from a chargeback like this one is not to have done the business at all. (There are cases where a merchant could choose to take payment through another method, but I don't think that would have been practical here given Mr R's apparent location.) If Mr R chooses to accept CNP transactions in future, then he will also be choosing to accept the associated risks.

If Mr R is able to find a merchant acquirer that will cover chargeback liabilities for fraudulent CNP transactions, then he is of course free to switch to that acquirer (subject to giving Barclaycard any appropriate notice). But as I said, I am not aware of any merchant acquirer in the UK that takes a different position to Barclaycard on this point. If Mr R was aware of such a merchant acquirer, I suspect he would have already told me about them. It is also possible that his concerns about the wider industry have been influenced by his inability to find an acquirer offering terms that he would like to accept. But I can only consider Mr R's individual complaint about the specific chargebacks that he has brought to my attention. As an ombudsman, I cannot investigate wider issues. That is a matter for the relevant regulator.

Is Barclaycard's offer to pay £750 fair?

For the reasons I've given above, I don't think it would be right for me to order Barclaycard to pay anything towards the chargebacks. But Barclaycard clearly made an error in telling Mr R that he would not be liable for the chargebacks, and it is therefore open to me to make an award for any distress or inconvenience Mr R suffered as a result of that error. We publish information on our website about our approach to such awards, which is available at <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience> .

Barclaycard says it has already paid £750 to Mr R's merchant account to apologise for its error in providing misleading information. I would normally only make an award of more than £750 for distress and inconvenience if I was satisfied that a bank's mistake had caused the complainant serious disruption to daily life over a sustained period, with the impact felt over many months. I might also make an award of more than £750 if I was satisfied that the bank's error caused a substantial short-term impact. Here, while I accept that the bank's error did cause Mr R to suffer distress, in the circumstances here I don't think it would be fair for me to order Barclaycard to do any more than it has already done.

I recognise that Mr R will be extremely disappointed in my provisional findings, particularly as our investigator thought Barclaycard should cover half of his losses. I acknowledge that fraud has a huge impact, both financially and emotionally. But Barclaycard isn't responsible for the actions of the fraudster. In light of the evidence I have seen so far, I think Barclaycard has already done enough to compensate Mr R for the error that it made.

I have also noted Mr R's comment that he simply can't afford to pay the amount Barclaycard is holding him liable for. I don't know if he has approached Barclaycard to ask about the possibility of a payment plan, but in general I would expect Barclaycard to be willing to discuss the support it can give to customers in financial difficulty."

Barclaycard did not provide any further comments in response to my provisional decision, but Mr R did. Briefly, he said:

- His own error was in failing to read Barclaycard's Terms and Conditions. But he did call Barclaycard, tell them he did not have a copy to hand, and ask for advice. He still can't think of anything he could have done differently other than not to do the business at all.
- Barclaycard made multiple errors. It didn't have adequately trained staff dealing with customer enquiries, it provided inaccurate information leading to significant financial losses, it had poor and inadequate systems of control relating to the authorisation process, it presided over a significantly flawed system, and failed to explain how inadequate the authorisation process was in combatting fraud.
- Given his overall financial vulnerability – which he described in detail – the last thing he would have done was put himself at any unnecessary risk.

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 have come to the same conclusions as I did in my provisional decision, for the same reasons as before.

Mr R has given a detailed explanation of his concerns about the card authorisation process more generally. He has serious reservations about whether industry participants are doing enough to combat fraud. I acknowledge the importance of the issue, but as an ombudsman it would not be appropriate for me to make any further comments on Mr R's wider concerns. My role is limited to determining the individual complaint he has made about Barclaycard.

I know Mr R strongly disagrees with me, but I don't see anything unfair about the contractual position that he rather than Barclaycard is liable for chargebacks. I also remain satisfied – for the reasons I gave in my provisional decision – that even if he did rely on the agent's incorrect information, it was not reasonable of him to do so.

Having considered all of the evidence, I therefore remain satisfied that it is fair for Barclaycard to hold Mr R liable for the whole of the chargebacks. I am further satisfied that Barclaycard's decision to reduce Mr R's overall debt by £750 in recognition of its error was fair.

My final decision

My final decision is that Barclays Bank Plc (trading as Barclaycard) has already done enough to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 May 2024.

Laura Colman
Ombudsman