

## **The complaint**

Mr K complains that Barclays Bank UK PLC (“Barclays”) failed to refund transactions he didn’t recognise or block an excessive use of his account.

## **What happened**

### *What Mr K says*

Mr K has explained that he travelled overseas (to a country I’ll refer to as E) to obtain medical treatment. He left the UK on 11 October 2023 and said he was met at the airport by a taxi driver who I’ll refer to as V. Mr K was taken to his hotel.

Mr K said he was later persuaded to stay in a short term flat rented by V to save money. He also helped with changing money into the local currency. Mr K said V was very friendly and helpful.

Mr K said that he visited medical businesses and has provided a number of handwritten letters dated 11 October 2023 to support his testimony.

He said that the driver was with him for a number of days (it’s unclear how long as Mr K has said between two and four days) before Mr K became aware that both his phone and wallet were missing.

Mr K later told Barclays he first became aware of it around midnight on 12 October and reported it to the local police on 13 October.

He went on to say that the police spoke with the driver who denied taking any of Mr K’s items. Mr K said he also spoke to the driver and asked him to return his phone because it held his personal information. Mr K said he spent several days in the flat before going to his original hotel where he was given back his phone.

Mr K reported the loss of his phone and card to Barclays when he returned to the UK on 23 October. It transpired that many thousands of pounds had been spent at various hotel casinos in E that Mr K said wasn’t him. Barclays declined to refund Mr K the funds he’d lost, and Mr K made a complaint where he also criticised Barclays for allowing these payments to leave his account without stopping them.

Barclays didn’t change their position and wrote to Mr K, explaining that they had no evidence to show how someone could have obtained his personal identification number for his debit card, also that his mobile banking app (BMB) was regularly logged into during the period Mr K said he lost his phone. Barclays also said that the same phone was later used to make undisputed transactions, despite telling Barclays it had been stolen.

Mr K disagreed with Barclays and brought his complaint to the Financial Ombudsman Service for an independent review.

### *What Barclays say*

Barclays initially delayed sending their evidence to our service, so the investigator assigned to the complaint recommended (based solely on Mr K's version of events) that he be refunded. Barclays then provided their evidence, which in summary was that:

- Mr K contacted them on 23 October to report the loss of his phone and debit card after returning to the UK on 22 October.
- He noticed the loss of his items around midnight on 12 October.
- He said his “phone app” was unlocked when it was stolen and his personal identification number (PIN) for his debit card was written down on the phone cover.
- The phone was stolen from a restaurant.
- Mr K said he didn't know the person who took his phone, but later said V saw him entering his personal information a few times as he was sat next to him.
- The disputed transactions took place between 14 October and 20 October.
- Mr K said he had no phone so couldn't have done anything to freeze or block his card.
- There were multiple BMB logins throughout the time the phone was lost.
- Mr K's phone was used to make undisputed transactions after his trip.
- The disputed transactions were funded through bank transfers from another account held by Mr K . This account had been used successfully before to transfer funds into the Barclays account.
- Disputed transactions were made with the genuine card and PIN.
- There were no incorrect PIN attempts.

#### *The investigation so far*

Further information from Mr K was sought and he said:

- He'd borrowed £7,500 to pay for his medical expenses.
- He paid cash for his medical appointments (no receipts were produced).
- He supplied a local police report which stated the card/phone was lost on 23 October. Mr K later said this was a second report a friend had obtained on his behalf, although the report confirms Mr K was the named person making it. Mr K said he'd originally reported it on 13 October and provided a second report to support this.
- He doesn't travel abroad much so was unaccustomed to the risks associated with such travel and admits he should have protected his phone and PIN better.
- Mr K has many medical ailments that mean he needs to write his PIN down.
- He took two phones with him to E.
- His phone passcode was a family members date of birth and part of the same

number for his card PIN. His banking apps had the same passcodes.

- V may have had keys to the flat he was staying in.
- His phone was returned to the hotel he first stayed at and apart from the emails, it had been formatted (data wiped).
- Mr K said V stayed with him around four days before he disappeared with the phone.

After reviewing the evidence, the investigator didn't think that Barclays should have to make a refund and Mr K's complaint wasn't upheld.

Mr K disagreed with the investigator's outcome and said that Barclays should have blocked his account and that V had seen him enter his BMB passcode (which gave access to his other bank's app to transfer funds). Mr K was also unhappy with Barclay's handling of his complaint and wanted a further review of it.

As no agreement could be reached, the complaint has now passed to me for a decision. I wanted to understand more about the trip to E from Mr K who was able to say:

- he returned to the UK on 20 October.
- He clarified he had been abroad (three other times in the last 12 months).
- The funds transferred from Mr K's business account were from family members to support his medical treatments.

### **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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Barclays can hold Mr K liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them but Barclays cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless Barclays can show that consent has been given, it has no authority to make the payment or to debit Mr K's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr K. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr K responsible for the disputed transactions or not.

I was sorry to hear that Mr K suffers from numerous medical complaints and had to arrange travel to obtain the necessary treatment for some of them. But, I've found it difficult to establish a reliable narrative of what happened to Mr K whilst he was in E. That's because there are a number of conflicting statements and dates provided by Mr K.

- He's told our service he returned to the UK on 20 October and told the bank he returned on 23 October.
- He said V was with him for around four days but has also said he first noticed the

loss of his items at midnight on 12 October and notified the police on 13 October. It's been established that Mr K arrived in E on 11 October, so V could only have been with him for just over a day (rather than four).

- He told the bank he had no means to report the loss until he returned to the UK but told our service he had a second phone with him, so could have reported it when he first noticed.
- Barclays notes (and final response letter) refer to the loss of Mr K's phone, but not its return. Mr K doesn't appear to have mentioned the return of his phone to Barclays (which accounts for their belief he never lost it in the first place). The first record I've seen about the returned phone was after Mr K brought his complaint to our service.
- Mr K said his apps used the same passcodes and his card PIN and phone passcode were a version of a family members date of birth. But, these different passcodes consisted of different number lengths (between 4 and 6), so it's difficult to see how all these were obtained by V in such a short space of time (apart from the written PIN).
- The second police report states it was Mr K himself who made it (on 23 October), so it's either wrong or unreliably completed making both documents difficult to accept on face value.

Mr K has argued that he wasn't responsible for the payments to the casinos, but it's apparent that he was present in E for the duration of all the disputed transactions, only returning shortly after the last one was made.

He's also said that V returned his phone after formatting it (wiping data from it). I found this an unusual step for a thief to take, risking being caught with a stolen phone (particularly when V had denied taking it in the first place). It seems a lot of trouble to go back to Mr K's first hotel and hand it in when it would have been much easier just to dispose of it without any risk.

Mr K said he'd written the PIN down – which is in contravention of the security requirements for his account, that was stolen alongside his wallet. One of the first things a thief would tend to do would be to withdraw cash, but here there's no evidence that happened, which I found surprising. I accept that not all thieves act the same way, but the main reason for stealing someone's banking details would be to take as much of their cash as possible. Here those disputed transactions took place over many days. It seems the user wasn't concerned they'd been reported which isn't the act of a thief who wouldn't know when the card would be blocked.

Given that Mr K said he first noticed the loss at midnight on 12 October – he had plenty of time to notify Barclays of the loss of his card. That he didn't suggests it wasn't an unknown person using his card. Mr K had a second phone and about a day and a half to report the loss. So, even if I thought the transactions were carried out by an unknown third party, I'd still be unlikely to recommend a refund because Mr K was in breach of his terms by writing his PIN down and he had ample time to stop these transactions, but for some reason chose not to. I don't think it would be fair or reasonable to expect Barclays to refund these payments given these circumstances.

Mr K held another bank account in his company name, which was the source of the funding for the disputed transactions. He says this money was from a family member(s) for his medical treatment. I haven't looked at the operation of this account in any depth, but it would be an unusual way to operate such a business account (mixing personal loans with company funding), given that Mr K is the sole director of this company. What is apparent is that it was

this account that provided the bulk of funds later spent through Mr K's Barclay's account.

I've thought about Mr K's complaint concerning Barclays lack of intervention. They've said that these transactions didn't trigger any of their fraud systems. They were all funded from a known account and used both the genuine card and PIN. I don't think that Barclays would have been particularly concerned here because Mr K was operating his account in such a way to fund the outgoing payments and by using the card and PIN, Barclays wouldn't think they'd been stolen. As already mentioned, there was ample opportunity to stop these payments if Mr K wished to, so anything that Barclays may have done would have had little impact.

But, having looked at all the evidence, I think it unlikely that V had enough time to acquire the necessary passcodes (which were of different lengths) and then use Mr K's phone to log into two different banking apps, before using his card and PIN to make these transactions. Based on an objective review of this complaint I'm satisfied that it was more likely than not that Mr K made these transactions, and it was both fair and reasonable for Barclays to hold him liable for them.

### **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 K to accept or reject my decision before 12 June 2024.

David Perry  
**Ombudsman**