

## **The complaint**

Mr T complains that Barclays Bank UK PLC did not refund a series of transactions he says he did not carry out himself.

## **What happened**

Mr T raised a disputed transactions claim with Barclays on 21 January 2023 following a series of transactions that had occurred on his account in the early hours of the same day. He confirmed that during the previous evening he had paid for a meal and then had later paid for drinks at a hotel. However, he says he did not carry out the later transactions which totalled just under £7,500.

Barclays carried out an investigation and declined Mr T's disputed transactions claim. This is because Mr T's genuine card and personal identification number (PIN) were used for the transactions, and they could find no reasonable point of compromise for these. Mr T confirmed he had his card and his mobile phone in his possession all evening and still had them the following day and he confirmed no-one else knew his PIN.

Mr T referred the complaint to our service and our Investigator looked into it. They agreed that the evidence showed the genuine chip and PIN were used to make the transactions. As Mr T had the card in his possession during the period of the disputed transactions, they could not see a reasonable point at which they could be compromised.

In addition, a text was sent to Mr T's registered phone number during the time to confirm if one of the disputed transactions was genuine, and a response was received from Mr T's mobile phone number confirming that it was. As Mr T has said he had his phone in his possession the whole time, which was password protected, the Investigator could not explain how a third party could carry have authorised the transaction. In addition, there were several log ins to Mr T's mobile banking during the period in question. Because of this, they did not agree that Barclays needed to refund the transactions.

Mr T's representative, Ms B, replied on his behalf. She did not feel that the Investigator had shown beyond a reasonable doubt that a third party did not carry out the transactions. She requested that we contact the companies that the payments went to as she said there was no connection to Mr T. In addition. She felt the fraud team should have picked up on the transactions sooner as they were unusual.

As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

## **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.

Generally, Barclays is able to hold Mr T liable for the disputed transactions if the evidence suggests it's more likely than not that he made or authorised them himself. This position is

confirmed in the Payment Service Regulations 2017 (PSRs) and the terms and conditions of his account.

From what I've seen, the payments were made using Mr T's genuine card and correct PIN. While this is important, it isn't enough on its own to say Mr T is liable for the transactions. Barclays also has to show it's more likely than not that Mr T himself made or otherwise authorised the transactions.

Having carefully considered everything available to me, I think Barclays is able to hold Mr T liable for the transactions. I'll firstly address Ms B's concern that the debit card may have been cloned. Cloning involves copying the account information contained on the magnetic strip on the back of a card and transferring it to a (clone) card. That clone is then used to make purchases that do not require the PIN, such as online payments or transfers. It should be noted that there is no consensus among experts that the cloning of chips within a debit card is even possible, let alone widespread. I have reviewed Barclays' records. These show that Mr T's real card was used to make the transactions. The embedded chip was read and the correct PIN entered. So, I am satisfied whoever made the transactions had Mr T's genuine card and knew his PIN.

Mr T has said that he had his debit card with him all evening, apart from a short period of time when a waiter took it while collecting a card machine. However, the timing of this does not coincide with the disputed transactions. Mr T has said he may have been 'shoulder surfed' while making a genuine transaction at around midnight. However, the disputed transactions did not occur until over two hours later and Mr T still had his card the following day. Generally speaking, when a fraudster steals a card after observing the PIN they will use it straight away and would not usually go to the lengths of returning the card to the victim many hours later.

Barclays have also pointed to the fact that Mr T was sent a text message to the mobile phone number registered to his account, which is the same mobile phone number Mr T has provided to our service as a point of contact, to ask if one of the transactions Mr T has now disputed was genuine. A text was sent back by Mr T's registered phone to confirm it was. As Mr T has confirmed he had his phone in his possession all evening with a level of security in the form of a passcode, I think it's more likely Mr T himself confirmed the transaction was genuine.

In addition to this, there were multiple log-ins to Mr T's mobile banking app using the mobile phone registered to his account during the period in which the disputed transactions were carried out. This suggests that Mr T was actively checking his online banking during the period in which the disputed transactions were taking place and could reasonably have spotted them at that point. However, he did not raise a claim until the following evening.

On balance, having considered everything available to me, I think it was reasonable for Barclays to hold Mr T liable for the disputed transactions based on the evidence provided to them. There was no clear point of compromise for the card and PIN, and the evidence suggests Mr T confirmed one of the payments as genuine and checked his online banking multiple times when the disputed transactions were occurring.

Ms B has mentioned that Barclays and our service should have evidence proving beyond a reasonable doubt that Mr T carried out the transactions. However, that is the burden of proof for a court of law. Our service works on the balance of probabilities and having done so on this case, I'm satisfied that Barclays is able to hold Mr T liable for the disputed transactions. Ms B has also asked that we contact the businesses that the payments went to in order to establish if there was a link between Mr T and them. If Mr T and Ms B wanted this to be considered they could reasonably have contacted the companies and provided us with this

evidence. However, I have determined that based on the evidence available to me from both parties, there is enough for me to be satisfied Barclays can hold Mr T liable for the transactions.

Ms B has said that the transactions were unusual and should have been flagged by the fraud department. However, I can see that the third payment in the series was flagged as unusual and this is why a text was sent to the phone registered to Mr T's account. As this text was responded to confirming the payment was genuine, I therefore think it was reasonable that the following payments were allowed to go through without additional checks. With this in mind, I think Barclays applied reasonable checks to the transactions.

### **My final decision**

I do not uphold Mr T's complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 September 2023.

Rebecca Norris  
**Ombudsman**