

## **The complaint**

Mr H complains that Barclays Bank UK PLC (“Barclays”) won’t refund several transactions he didn’t make or otherwise authorise from his account with it over a number of years. He says his ex-partner made the payments during that time from his account without his knowledge or consent.

Mr H is being represented by Mrs S in bringing this complaint.

## **What happened**

The full details of this complaint are well known to both parties and were also set out by the investigator previously, so I won’t repeat them again here. Instead, I’ll provide a brief overview and focus on giving my reasons for my decision.

Mr H says that between 2013 and 2020, unbeknownst to him, his ex-partner transferred nearly £39,000 out of his account into hers over a series of transactions. She also applied for loans in Mr H’s name with other lenders without his knowledge or consent – this has been considered separately and isn’t the subject matter of this complaint. Mr H explains his ex-partner withheld his current account statements for several years and he didn’t know anything about the payments until 2021, when he requested a few years’ worth of statements from Barclays. Mrs S has also told us that Mr H and his ex-partner were together a long time and they were happy, up until a couple of years ago.

I issued a jurisdiction decision a couple of months ago explaining that our service can only consider Mr H’s complaint about disputed transactions which happened from 25 June 2015 onwards, bringing the loss being claimed to around £29,000. I passed the case back to the investigator to consider the merits. The investigator didn’t think the transactions could have been carried out without some involvement from Mr H. So, they didn’t consider it fair to ask the bank to refund the disputed transactions.

Mrs S didn’t agree with the investigator’s conclusions. So, the complaint has been passed to me to decide.

## **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.

I thank Mr H and Mrs S for letting us know about Mr H’s circumstances during the relevant period. I’m sorry to learn that he’s gone through a difficult time and checking his statements wasn’t a priority for him during the relevant period. It’s understandable that he and Mrs S feel very strongly about what has happened. I’d like to reassure them and Barclays that I have considered everything that’s been submitted in its entirety.

Having done so, I’ve decided not to uphold this complaint. I’ll explain why.

*Did Mr H authorise these payments?*

In line with the Payment Services Regulations (PSRs) relevant at the time of the disputed transactions, the starting position is that Mr H is liable for payments he authorises. The PSRs specify that authorisation depends on whether the payment transactions were authenticated correctly – and whether the account holder consented to them.

It seems to be agreed that the disputed payments were properly authenticated. They were carried out using Mr H online banking security credentials. Whether Mr H also consented to them depends on whether he completed the agreed steps to make the payment. Or if someone else acted on his behalf (an agent) and used those agreed steps.

Agency can be created not only by the bounds of the actual authority granted by the Principle, but also by the acts of the agent which appear to have been made with the principle's authority.

Mr H says he didn't make these payments and didn't share details to allow someone else to make them. But as the investigator explained, for someone else to obtain Mr H's personalised log-in credentials, these would have needed to be shared with them. Or, if it is the case that his ex-partner set up a new device to access Mr H's account (there's a suggested she used an iPad), certain pieces of information would still have needed to be shared by Mr H to enable this to happen. For example, card details, activation and verification codes which would have been sent to Mr H's registered mobile to complete the registration process.

This means that, on balance, the payments were made by someone Mr H shared his security information with. While he may not have been aware in advance of the payments, I think they would still fall under apparent authority. And although he didn't check his statements, he's told us he checked his account balance every so often when he made cash withdrawals. I think he ought to have noticed any discrepancies in his account balance if he wasn't expecting these transactions to take place. I can't see that Mr H took any steps to revoke the authority created for someone else to make payments from his account. And so, the starting position is that the transactions would be considered authorised by Mr H, and it's fair to hold him liable for them.

*Is there another reason why Mr H shouldn't be held liable for the payments?*

As explained above, customers are generally liable for authorised payments. But there are some situations where we believe that firms—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment.

I've considered if Barclays ought to have identified a fraud risk when these payments were made. I'm not persuaded it should have. This pattern of several transactions to Mr H's ex-partner spread across the month existed for a long time. The size of the payments didn't appear out of line with Mr H's usual spending.

I therefore consider it reasonable that Barclays processed the payment instructions it received, in line with its duty to promptly execute authorised payments without undue delay. It had no reason to suspect that something untoward could have been happening – so isn't liable for her loss.

I realise that this will come as a significant disappointment to Mr H and Mrs S, not least because the matter has been ongoing for some time. But for the reasons set out above, I don't think Barclays needs to refund the disputed transactions.

The bank has, however, recognised some customer service failings and has offered £50 compensation in recognition of this. If it hasn't already been paid, Mr H will need to contact Barclays directly if he would now like to accept this payment.

### **My final decision**

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 October 2023.

Gagandeep Singh  
**Ombudsman**