

The complaint

Mrs P and Mr P complain that Barclays Bank PLC won't refund disputed ATM withdrawals that they say they didn't make or otherwise authorise.

As most of the submissions were made by Mr P, for ease of reading, I'll refer to him alone in this decision.

What happened

From 13 October 2022 to 22 October 2022, Mr P was on holiday abroad. He says on the evening of 14 October 2022, he used his Barclays debit card – linked to his current account – to withdraw money from an ATM. He attempted to withdraw €150 but the transaction was declined. Mr P then tried another of his Barclays' debit cards – linked to another current account – and the transaction was also declined. He said no cash was withdrawn from the ATM provider on either card.

Mr P says he checked his account the following day and saw there had been four withdrawals on each card which he did not recognise totalling just under £2,000. He reported the matter to Barclays.

Barclays reviewed the situation and issued temporary credits to Mr P. It issued its final response to Mr P on 8 November 2022. It said no errors were made when the transactions were carried out and they were chip and PIN authorised. It advised Mr P the temporary credits would be removed.

Unhappy with Barclays' response, Mr P referred his complaint to this service.

One of our Investigators reviewed the complaint. She suggested that Barclays refund the disputed transactions together with interest. She didn't feel Barclays provided enough technical evidence to rule out the ATM not being tampered with. Barclays didn't agree and asked for the complaint to be passed to an Ombudsman for review.

The complaint has therefore been passed to me for determination.

On 31 October 2023, I issued a provisional decision upholding this complaint in part in relation to the poor customer service Mr P received. I did not recommend a refund of the disputed transactions.

For completeness, I repeat my provisional findings below:

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've reached different conclusions to that of our investigator and I don't intend to tell Barclays to return Mr P's disputed transactions, I'll explain why.

Generally speaking, Barclays is required to refund any unauthorised payments made from Mr P's account. Those rules are set out in the Payment Services Regulations 2017 (PSRs).

Mr P has said he didn't carry out the transactions in dispute. I therefore need to determine whether or not I think he did authorise the transactions or not.

I've seen from Barclays records that the genuine cards and PINs were used to make the transactions, so I'm satisfied they were authenticated. This is important, though not enough on its own to say Barclays can hold Mr P liable for the transactions.

A payment out of someone's account can only be treated as authorised if the payer has consented to it. This means the customer must have consented to a payment transaction taking place. So, I've gone on to consider here whether I think Mr P consented to the transactions and therefore whether they were authorised or not.

I've thought about the technical ATM evidence our investigator wanted to see. I don't think that evidence is required for me to make a determination on the matter at hand. Evidence from the ATM provider of machine tampering or a surplus of funds would be helpful in scenarios where a customer says they didn't receive cash from the ATM or there was a difference in the amount debited and the cash actually received. Here, Mr P says he didn't make the transactions at all. I've determined that Mr P's genuine cards were used, which means they would have needed to be presented on each occasion. There are multiple disputed transactions with sufficient time and space between them, rather than one isolated incident, therefore the likelihood of machine tampering being a factor is highly unlikely in my judgement.

Mr P disputes transactions that were carried out on two of his Barclays debit cards – linked to his current accounts. I'll refer to the accounts as debit card 1 and debit card 2. I've listed the disputed transactions below:

debit card 1

Transaction number	Date	Time	Amount	Authorisation decision	PIN entered correctly
1	12/10/2022	08:55:53	£15.89	approved	N/A
2	15/10/2022	00:16:46	£152.03	declined	No
3	15/10/2022	00:19:05	£152.03	approved	Yes
4	15/10/2022	00:19:57	£497.67	approved	Yes
5	15/10/2022	00:20:53	£300.16	approved	Yes
6	15/10/2022	00:21:45	£300.16	declined	Yes
7	15/10/2022	00:22:02	£152.03	declined	Yes
8	15/10/2022	00:22:21	£102.65	declined	Yes
9	15/10/2022	00:22:48	£53.28	declined	Yes
10	15/10/2022	00:24:23	£201.41	declined	Yes
11	15/10/2022	00:34:47	£102.65	declined	Yes
12	15/10/2022	01:39:57	£200.57	declined	Yes
13	15/10/2022	01:40:27	£43.22	approved	Yes
14	15/10/2022	01:41:36	£43.22	declined	Yes
15	15/10/2022	01:45:41	£43.22	declined	Yes
16	15/10/2022	01:46:09	£23.54	declined	Yes

debit card 2

Transaction number	Date	Time	Amount	Authorisation decision	PIN entered correctly
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1	13/10/2022	06:58:15	£1.30	approved	N/A
2	15/10/2022	00:16:17	£300.16	declined	No
3	15/10/2022	00:23:20	£596.43	approved	Yes
4	15/10/2022	00:25:24	£201.41	approved	Yes
5	15/10/2022	00:26:24	£250.79	declined	Yes
6	15/10/2022	00:26:42	£152.03	approved	Yes
7	15/10/2022	01:37:03	£200.57	declined	Yes
8	15/10/2022	01:37:43	£151.40	declined	Yes
9	15/10/2022	01:38:08	£53.05	declined	Yes
10	15/10/2022	01:43:40	£43.22	approved	Yes
11	15/10/2022	01:44:46	£43.22	declined	Yes
12	15/10/2022	02:07:02	£10	approved	N/A

I've noted the genuine spend on debit card 1 prior to the disputed transactions was on 12 October 2022 but it was a contactless payment so Mr P didn't need to enter his PIN. The last genuine spend on debit card 2 prior to the disputed transactions was on 13 October 2022 (two days prior to the disputed transactions). This was a mobile payment and again didn't require Mr P's PIN to be presented.

I've also noted that the transactions Mr P acknowledges making himself (transaction 2 on both debit card 1 and debit card 2) were both declined on the basis that Mr P entered his PIN incorrectly on both occasions. And transaction 3 on debit card 1 was for the exact amount as transaction 2.

I therefore think it's very unlikely that an unknown third party could have taken Mr P's debit cards prior to or on the night of the disputed transactions, guessed his PINs correctly (first time), carried out multiple disputed transactions at different intervals – the first on debit card 1 being the exact amount that was attempted by Mr P himself – before returning both debit cards to Mr P without him noticing. This is because, there was no point that Mr P entered his PINs correctly prior to the disputed transactions, so I rule out the possibility of someone having shouldered surfed him. I also don't think it's probable that someone could have shouldered surfed Mr P at a time he entered his PIN correctly before he travelled abroad, to then have followed him abroad to carry out the disputed transactions.

Mr P's account of events are that he visited multiple bars/pubs on the evening/early morning of 14 October 2022/15 October 2022. He says he attempted to withdraw cash from an ATM and when these transactions were declined, he almost immediately took a taxi back to his hotel. Based on the technical evidence, this doesn't seem possible.

The evidence shows that the PIN was entered incorrectly first time on each card, then a couple of minutes later, the PIN on debit card 1 was entered correctly and cash was withdrawn on a few occasions. Then the PIN for debit card 2 was entered correctly and cash was withdrawn on a couple of occasions. Multiple transactions on each card were declined but the evidence shows that the PINs were still entered correctly. Barclays hasn't provided any additional commentary as to why transactions were declined, I would assume that it may have found the pattern and location of the transactions unusual, or cash withdrawal limits were reached. I'd invite any additional commentary Barclays has to make on this – though it's not pertinent to my outcome.

The transaction Mr P accepts making himself was a taxi ride back to his hotel. However, the technical evidence shows this transaction was made at 2.07am on 15 October 2022. This is

inconsistent with his testimony that he took a taxi almost immediately after his cards were declined as these attempted cash withdrawals were made approximately two hours earlier. The pattern of the transactions is consistent with Mr P's testimony that he visited various bars/pubs before returning to his hotel. This is because cash was withdrawn, then there was a break on each card for over an hour before more cash was withdrawn and the final transaction was the taxi ride which Mr P acknowledges making. There are no further disputed transactions after this.

If an unknown third party had access to Mr P's debit cards, I think it's likely they would have withdrawn as much as they could, as quickly as possible. I don't find it likely that an unknown third party would have waited an hour before attempting to make further transactions. I therefore think the most likely scenarios were either; Mr P made the disputed transactions himself, or, he authorised another party to carry out the transactions. In either case, I think the transactions were authorised by Mr P in accordance with the PSRs. And because of this, I don't think Barclays acted unreasonably by holding him liable for the transactions.

Customer service

I think Barclays could have done a better job when logging Mr P's claim. He was on hold for a while and when he eventually spoke with someone, he was told his claim couldn't be logged as its systems were down. Barclays' systems being down weren't within its control but I think it could have offered to call Mr P back when its systems were back up again instead of asking him to call back later that day or the day after. I also think Barclays could have explained why it was holding Mr P liable for the disputed transactions. Whilst I accept it was reasonable to do so, I think it would have come as a surprise to Mr P. The Barclays adviser Mr P spoke with said it was 'strange' that the transactions were re-debited and they also couldn't explain why this had happened. From his perspective his claim was accepted when he was issued with temporary credits but a month later these transactions were re-debited without a good explanation as to why. I think the re-debits came as a shock to Mr P, which would have been avoidable had Barclays provided a better explanation. I think the poor customer service would have had an impact on Mr P, particularly as large amounts were re-debited from his account. So, I propose that Barclays pays him £150 compensation for the distress and inconvenience caused.

Responses to my provisional decision

Mr P didn't accept the decision and in summary said:

- He complained to Barclays numerous times after the incident and didn't receive the information I provided in my provisional decision. He was provided with poor service.
- The information provided by Barclays has caused bias in this service's investigation.
- He refutes that he withdrew cash and entered his PIN for the transactions on debit card 1 and debit card 2 except for one attempt.
- Using debit cards 1 & 2 he did attempt to withdraw cash from an ATM and he entered the PIN correctly, but the cash transaction was declined.
- He did not receive text alerts or notifications from Barclays about the transactions until the following day.
- Until he received my findings, he didn't know that cards had been used and declined that evening.
- He was unaware his PIN was entered incorrectly, only that the card was declined.
- He didn't know there were any unauthorised withdrawals, or any card transactions being declined on 15 October.

- The first alert that Mrs P and he received alerting them to the theft came the following day, 16 October, when they received mobile notifications from Barclays. He called Barclays immediately to cancel both cards.
- He would like Barclays to explain why they weren't alerted sooner. Had they been alerted by Barclays, they could have acted to prevent the perpetrators from withdrawing so much of their funds.
- He had the same PIN for a significant period. He did not enter it incorrectly. This further evidences how unlikely a scenario this is that he would not know his PIN, he suggests Barclays check their records and provide evidence of how many times he's had his card declined due to entering the incorrect PIN.
- Cash withdrawals from both accounts is highly irregular. One of the debit cards is solely used for 'household' bills. They would like the Ombudsman to request a breakdown of cash withdrawals made from one of the accounts over the past five years which will evidence this.
- To establish fraud, he would like the Ombudsman to investigate why Barclays declined some requests and authorised others. It would appear that Barclays suspected unusual activities and should have alerted them sooner.
- Mr and Mrs P have been loyal customers of Barclays for over 30 years they have multiple accounts with significant amounts of money deposited. It's unfounded to suggest he would attempt to commit fraud in this manner.
- He believes the cards were compromised in a sophisticated system potentially using some sort of malware in the ATM and/or the cards were cloned.
- For the Ombudsman to reach a final decision, he requests the technical evidence from the ATMs be obtained and reviewed for an unbiased and fair conclusion.

Barclays replied accepting my provisional decision. It said in summary:

- Mr P claims he genuinely attempted to use each card in the ATM once but was unsuccessful. Its records support this account of events however, both attempted withdrawals were declined due to the incorrect PIN being entered.
- The authorisation reports show that further attempted withdrawals were declined because the cards exceeded the ATM daily withdrawal limit and not due to any fraud concerns.
- It has no method of contacting the ATM operator. The only method of disputing a foreign ATM (for an ATM dispute, not fraud) is via the VISA chargeback process. But it can only raise these types of chargebacks when a customer genuinely makes an ATM withdrawal but the cash is not dispensed correctly and this case does not match that description.
- Technical data from the ATM provider is not relevant to this type of case. This is a fraud case and is a question of authorisation, technical evidence from the ATM provider would only support cases involving cash not being dispensed.
- If the ATM was tampered with, the cards would have been retained whilst the PINs are recorded by a device. The fraudsters would then have retrieved the card from the device and used it without Mr P's knowledge or consent, that did not occur in this instance as Mr P retained possession of the cards.
- Further, if the ATM was tampered with in another manner and a skimming device was fitted, the disputed activity would not be authorised via chip and PIN. A skimming device records card details, such as the 16-digit card number and the magnetic strip details, then the cards can be cloned for the purpose of card not present transactions (i.e. online transactions). The evidence in this case shows that the cards chips were

read. The cards have a chip capability which is used to ensure cards cannot be cloned or copied.

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 and whilst I know this will not be the outcome Mr P hoped for, I don't find that Barclays acted unfairly by refusing to refund his disputed transactions.

I acknowledge that Barclays should have provided clearer information when Mr P made his claim and subsequently complained. This is why I awarded compensation and I maintain that Barclays ought to have provided a better explanation for Mr P to understand why he was being held liable for the disputed transactions.

I appreciate Mr P maintains that he entered his PINs for both cards correctly first time but the transactions were declined. However, I'm more persuaded by the technical evidence as this shows me the reason those initial authorised transactions were declined on debit card 1 and debit card 2 were due to the incorrect PINs being entered. And so in my judgement, it wouldn't have been possible or probable that an unknown third party could have shoulder surfed Mr P whilst he was at the ATM to learn his PINs as these weren't entered correctly. As I explained in my provisional decision, the last time the cards were genuinely used prior to the disputed spend were days prior to the disputed transactions and the PINs weren't required or presented when the undisputed transactions occurred.

Mr P also explained during the course of his complaint that no one knew his PINs. So I don't find it likely that someone known to him could have taken and replaced both debit card 1 and debit card 2 on more than one occasion with more than one hour between the transactions on each debit card without Mr P noticing and without knowing his PIN in the first instance. I've noted Mr P's comments about the unusual nature of the transactions, particularly the declined transactions. The question of the irregularity of spend is relevant if I were to think on balance that the transactions were unauthorised. In this case, I'm satisfied that the transactions were authorised by Mr P and Barclays wouldn't be expected to intervene in legitimate transactions that are not the result of a fraud or scam. So I don't require a history of Mr P's account use.

Barclays explained and evidenced that the transactions declined (after the first declined payment on each debit card) were declined because the maximum daily cash withdrawal limit was reached on each card. This is consistent with the lesser amounts being attempted after each declined transaction until a permitted amount could be accepted.

I don't think it's likely that the ATM was tampered with. As I explained in my provisional decision, obtaining the technical evidence from the ATM provider would support claims where cash wasn't dispensed from the ATM or an incorrect amount was dispensed. I don't think the technical evidence would be helpful in this case. The evidence shows that the chip on each card was read for each transaction and the PINs were entered correctly. I don't think it's likely the ATM was tampered with nor do I think it's likely that the cards were cloned. The transactions stopped shortly before Mr P got a taxi back to his hotel. Mr P paid for the taxi via contactless payment on debit card 2 which he accepts he authorised. For the avoidance of doubt, I have no reason to doubt the timings of the technical evidence provided and I'm satisfied this payment was made after the disputed transactions were carried out. If a third party tampered with the ATM or cloned Mr P's cards, I think it's unlikely that the chips on the cards would have been read. I also don't think it's likely that the transactions would have ended when they did. I think a fraudster would have likely tried other payment methods

to obtain as much money from Mr P's cards as possible. Mr P didn't cancel his debit cards until later that morning and so I think it's likely a fraudster would have continued to attempt to use the cards. That didn't happen here.

And so, for the reasons I explained in my provisional decision and here, I think the most likely scenarios were either; Mr P made the disputed transactions himself, or, he authorised another party to carry out the transactions. In either case, I think the transactions were authorised by Mr P in accordance with the PSRs. And because of this, I don't think Barclays acted unreasonably by holding him liable for the transactions.

My final decision

My final decision is I uphold this complaint in part and Barclays Bank UK Plc should pay £150 for the distress and inconvenience caused to Mr P.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 5 January 2024.

Dolores Njemanze
Ombudsman