

The complaint

Ms S complained because Barclays Bank UK PLC refused to refund her for 23 transactions totalling £2,371.28 which she said she didn't make.

What happened

On 19 December 2022, Ms S rang Barclays. She said she'd just had a transaction declined, so she'd logged in and seen transactions abroad which she hadn't made. On 12 December, a family member had paid in £2,000 and she'd then withdrawn £30 cash. No-one had been around her at the machine at that time, and that was her last genuine transaction using the card. Ms S disputed 23 transactions which had started on 13 December. Ms S said she didn't check online banking regularly and hadn't had any notification to approve the payments. She said she'd thought she had the card somewhere in the house but she couldn't find it. In the call Ms S twice told Barclays' fraud adviser that she kept her PIN in the purse with her card.

Barclays cancelled Ms S's card, and ordered a new one for her. It provided Ms S with a temporary credit while it investigated.

Barclays investigated, and on 29 December it wrote to tell Ms S it was holding her liable for the disputed transactions. It said it couldn't find any evidence of fraud, so it couldn't offer her a refund. It said in reaching its decision, it had taken into account the security capability of the card, her security obligations under the terms and conditions, and the details of the transactions she'd disputed.

In calls, Barclays told Ms S she'd said she'd written down her PIN and kept it in her purse with the card. Ms S said she hadn't been to the country where the transactions took place, and was now overdrawn and it was money she'd worked for. Ms S also said she hadn't said that she'd written down her PIN, just that she'd kept her card in her purse. Barclays' phone adviser told Ms S that the disputed transactions had been carried out using chip and PIN, using the genuine debit card. The adviser asked Ms S how anyone else could have known the PIN, and Ms S said she didn't know. Barclays re-debited the temporary credit and Ms S complained.

In the phone call about the complaint, Barclays didn't uphold Ms S's complaint and held her liable. It said there was no PIN compromise found; that chip and PIN had been used; and that there were previous flight transactions which had indicated that Ms S travelled; and there had been a delay in Ms S reporting the dispute. Ms S became annoyed and asked whether Barclays had sent a letter to someone else sending them her PIN.

Barclays wrote again to Ms S on 1 February 2023. It said the disputed transactions had all been made using the genuine debit card, which couldn't be cloned, and correct PIN. It pointed out that the card was no use to a fraudster without the correct PIN. So either the PIN must have been available with the card, or it was known to whoever was using the card. The account terms and conditions meant that Ms S was responsible for keeping the card safe and always maintaining the security of the PIN. So there was a lack of reasonable care.

Ms S wasn't satisfied and contacted this service. She said it had impacted her and was very frustrating. She said she wanted her money back so she could get back to her life.

Our investigator didn't uphold Ms S's complaint. His view was that what happened was that Ms S:

- either authorised or consented to the transactions by making the PIN available to a third party who had the card, or
- was grossly negligent because she'd twice said on the call recordings that she'd kept her PIN with her card in a purse. This would have enabled a third party to use the card and PIN.

Ms S didn't accept this. She said she wasn't happy with the outcome and was very frustrated at what was being said about her case because it made her seem like a criminal. She told the investigator she hadn't meant to say that she'd written down her PIN and kept it with the card. Ms S asked for an ombudsman's 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.

In these circumstances there are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*." So I've considered whether it's more likely than not that Ms S authorised the transactions herself, or whether she failed to keep her details secure through gross negligence.

I've looked at the technical evidence about the transactions. They were carried out using Ms S's genuine card. It's not generally thought possible to copy the chip on a card, and this service hasn't come across any cases where we felt this was a likely explanation of what happened. I haven't seen any evidence Ms S's card was cloned.

In relation to the PIN, the technical evidence again shows that the correct PIN was used. There are no failed PIN attempts. There are 10,000 possible combinations of a four-digit PIN, so it's most likely anyone would correctly guess a PIN. So whoever used Ms S's card must have known the correct PIN. The key factor here is how anyone other than Ms S, or someone authorised by her, could have obtained the card and found out the correct PIN.

I've listened to the phone calls, and it's accurate that Ms S twice told the Barclays call handler that she had written down her PIN and kept it in her purse with her card. She said this was because she had a bad memory. I recognise that Ms S later denied having said this, but the call recordings are clear.

There are three possible options here. One is that Ms S carried out the transactions herself. Another option is that she consented to the transactions by making the card and PIN available to someone else. The third option is that a third party unknown to Ms S stole the card and found out the PIN because she'd written it down with the PIN. I note that initially Ms S didn't tell Barclays that her card had been stolen, and just said that she thought it was somewhere in her house.

In practical terms, it doesn't make any difference which of these three options happened here. That's because Ms S is liable whether she carried them out herself; or allowed

someone else to do so by letting them have her card and PIN; or was grossly negligent by writing down her PIN and keeping it with her card. The terms and conditions of the account, to which Ms S would have to have consented when opening the account, provide that customers must keep their security information secure, so by not doing so, Ms S was breaking the terms and conditions of her account.

For completeness, I'd add that I don't accept Ms S's suggestion that Barclays had sent a letter to someone else which sent them Ms S's PIN. Bank staff don't have access to a customer's PIN. And even if Ms S hadn't said she'd kept her PIN written down with her card, there's still no clear way in which her PIN could have been obtained by a third party in all the circumstances of this case.

I've also borne in mind the other factors which Barclays raised with Ms S: that there were previous flight transactions which had indicated that Ms S travelled; and there had been a delay in Ms S reporting the dispute.

In addition, the pattern of the disputed transactions doesn't match that of a normal fraudster. Fraudsters tend to carry out transactions very quickly, in order to maximise their gain before the card can be blocked. That's not what happened here, where the disputed transactions – some as small as £4.74 – took place over seven days. There were also no attempted transactions after Ms S reported the dispute.

So I find that the only possibilities are that Ms S carried out the transactions herself; that she allowed someone else to use her card and PIN; or that she was grossly negligent because she had written down her PIN and kept it with her card, breaching the account terms and conditions. Ms S is liable in all three scenarios. So I don't uphold Ms S's complaint and Barclays doesn't have to refund her.

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 Ms S to accept or reject my decision before 26 September 2023.

Belinda Knight
Ombudsman