

The complaint

Mr S complains that Barclays Bank UK PLC failed to refund a transaction he didn't recognise.

What happened

What Mr S says

Mr S explained that he left his phone and debit card in his jacket pocket whilst at an event with other people. He said he went upstairs and later, when he came downstairs, his phone was missing. Some hours later the phone reappeared.

During that time, a transaction was made from his account using his phone and debit card which Mr S didn't recognise. He contacted Barclays about the payment and asked for a refund.

Barclays raised a fraud claim but then suffered a series of problems with the progress of the investigation. They didn't think that Mr S had returned paperwork they'd sent him and closed the investigation. They later realised Mr S had returned it within the timescales they set. There were further problems with the investigation which resulted in Barclays offering a small payment to Mr S to recognise their handling of his claim.

Barclays declined to make a refund for the payment that Mr S didn't recognise, believing he was responsible for it. Mr S raised a complaint, but Barclays didn't change their position and Mr S then brought his complaint to the Financial Ombudsman Service for an independent review.

An investigator was assigned to look into the complaint and asked both parties for information about the circumstances.

Mr S explained that after leaving his phone and debit card in his jacket pocket, a payment was made using the online banking app on his phone. He was upstairs at the time and other people were in the same property. He said he was drunk, and others could have seen him enter his passcode for his phone which he thinks was the same for his online banking. Mr S said his debit card was still in his wallet and his phone was returned to him within a day or so.

Barclays said that they couldn't see how anyone else had compromised Mr S's account. They confirmed the payment was made from his normal device (phone), using an IP address that he'd used before. Also, that a five digit security code was required to access the online banking app. The new payment was confirmed after a separate One Time Passcode (OTP) that was sent to his phone. This was required to be input into the banking app in order to authorise the new payee.

Note: IP addresses are a means to identify physical locations that online transactions are connected to and can be the actual physical location or other locations connected to the provider of the data services.

After reviewing the evidence, the investigator didn't uphold Mr S's complaint. It was stated that:

- There was no evidence to suggest how someone had obtained security details to bypass the phone and the banking app and use the OTP.
- There were additional log ins to the banking app around the time of the disputed transaction, including a transfer to an existing payee.
- Overall, there was no evidence to support another person being involved in the transaction.

Mr S disagreed with the investigator's outcome and further stated:

- He denied hosting a party.
- He was at a friend's house after an argument with his family.
- It would've been reported to the police, but Mr S didn't know everyone at the house.
- Mr S's SIM card was in a Nokia phone and not the main one he used for his banking. The Nokia phone didn't have a passcode and would've been easy to access.
- He confirmed his passcodes for the phone and the banking app were the same.

As no agreement could be reached, the complaint has now been passed to me for a 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Barclays can hold Mr S liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Barclays can only refuse to refund unauthorised payments if it can prove Mr S authorised the transactions, but Barclays cannot say that the use of the internet banking app 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 S'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 S. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr S responsible for the disputed transactions or not.

Mr S is disputing one large payment made using his banking app that was operated from his mobile phone. In order to make the transaction, both the phone's security code and the banking app's security code were required. Mr S says he hadn't told anyone else about the code (or any of his banking codes/passwords) and the phone had the same five-digit

passcode as his banking app.

He believes someone saw him entering the code whilst at a premises with other people, some of whom he didn't know. Having looked at the security settings for his phone he had at the time, the manufacturers information says the phone can have a standard six-digit code, a four-digit code or a longer alpha numeric code. I couldn't see anywhere where it could have a five-digit code.

Of course, it may be possible to put a five-digit code in, but I also have to consider the broader circumstances described by Mr S. He says (in his earlier call with our service) that he was hosting a party and was drunk. He also said his phone was in his jacket pocket left downstairs whilst he was upstairs.

In his response to the investigator's outcome, Mr S introduced that he had another phone with the SIM card in (it would be the phone with the SIM card that would receive the OTP), which would make it easy for someone to access the OTP in order to finalise the transaction made using the internet banking app. This was new information to the complaint and changed somewhat Mr S's earlier version of events.

Originally he'd only spoken of his main phone being in his jacket pocket and being taken, to be returned later. Mr S didn't mention another phone which now seems to have received the OTP but was unlocked and easy to access. It's not clear if this was taken at the time with his other phone/returned or just left wherever it was originally. I found the change in events difficult to comprehend, particularly when Mr S had already told our service what had happened.

He's disagreed with the description of the party and whether he was hosting it, but for the purposes of this complaint, I don't think it's particularly relevant. What is relevant is how likely is it that someone can successfully bypass two sets of security and make a payment from his account to confirm it via OTP?

Looking at the log ins to the banking app, Mr S made various transfers both before and after the disputed one but didn't raise the fraud claim with the bank until about four days after it happened. He's said he raised it when he first noticed it, but at the time he was sending payments to a regular payee and because of this transaction, the account was well into an overdraft. I'm surprised he didn't notice the disputed transaction as it was the single largest one made through the account by some margin.

After an objective review of Mr S's complaint, I think it's implausible to conclude they weren't authorised without stronger evidence to the contrary. That means I think it's more likely than not that Mr S carried out these transactions himself – or that someone else with consent did so. Whilst I'm sure Mr S will disagree with me, I won't be asking Barclays to make any payment towards him or remove the debt created by the disputed transaction.

I noted the mistakes made by Barclays and the compensation they made to Mr S. I don't intend to change this and I think Barclay's offer was both fair and reasonable. Mr S also had other complaints relating to treatment he received by Barclays. As this particular complaint was only related to the disputed transactions, I haven't further considered any other complaint. If Mr S wishes to bring other complaint(s) to our service regarding any other issues he's raised, he's free to do so.

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 S to accept or reject my decision before 18 October 2023.

David Perry
Ombudsman