

The complaint

Mrs H has complained that Barclays Bank UK PLC has unreasonably refused to refund three transactions on her bank account which she didn't recognise.

What happened

Mrs H initially said she had lost her debit card when out shopping and that later she saw the notifications of these disputed transactions on her phone. And it was then she informed Barclays. However, it now transpires that Mrs H also left her phone in a shop by accident and when she realised this, she discovered the phone was still in the shop, so she retrieved it.

So, Mrs H first thought the transactions were done with her debit card. However, Barclay's evidence shows they were done on her phone and through her banking app on her phone which was also accessed. On this basis Barclays said it had no duty to refund these transactions as Mrs H failed to keep her security details safe.

Unhappy Mrs H referred her complaint to us. The investigator also thought Barclay's stance on the matter was correct and she didn't recommend Mrs H's complaint should be upheld. As Mrs H remained dissatisfied her complaint has been passed to me.

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 I'm not upholding this complaint. I'll now explain why.

First, I do understand my decision will be very disappointing to Mrs H, but I can only decide complaints like this with regards to the regulations which Barclays must abide by.

These regulations are called the Payment Service Regulations (PSR's). They provide the duties that a customer like Mrs H should adhere to plus the duties Barclays must adhere to as well.

The starting position is that the consumer Mrs H is liable for all 'authorised' transactions and Barclays is liable for all 'unauthorised transactions'.

Under these regulations, transactions are deemed 'authorised' if the correct procedure is followed to make the transaction. It doesn't matter if Mrs H didn't physically do the transactions herself either but that the correct procedure is followed. So, because Mrs H accidentally left her phone in the shop and because her phone didn't have any security code that meant the fraudster could access her phone and see she had Barclay's banking app on the phone. Mrs H also told us that because she finds it difficult to remember passcodes etc she had the banking apps password written down in her phone under a 'notes' tab.

One of the duties which the PSR's say a customer must do, is to *'take all reasonable steps to keep safe personalised security credentials relating to a payment instrument or an account information service.'* This is the primary obligation the PSR's place on consumers. The regulations go on to say that a bank can hold the consumer liable if they haven't met these obligations with either intent or gross negligence. I accept that Mrs H didn't intentionally allow someone else to use her phone to make a payment. So, I have to go on to consider whether she has been grossly negligent with her personalised security details.

Gross negligence is a concept that goes beyond carelessness – it needs to be a rather significant failing that any reasonable person would see as a risk. This is quite a high bar to clear.

Barclays has shown me that that for these three disputed transactions the payment was authorised through the banking app. And the person accessing the banking app on Mrs H's phone was able to successfully gain access to the banking app each time. Two of the payments were verified by Visa so again the password was used and the third one was authorised in the banking app. That means whoever did these transactions was able to access Mrs H's phone and then her banking app's passcode. Given her phone has no passcode and wasn't locked and her banking app passcode was held under a tab called notes, I consider that Mrs H didn't take reasonable steps to keep her phone and her banking app on her phone secure. I think any reasonable person would recognise this as a serious risk – anybody who could get access to Mrs H's phone would be able to carry out banking and transactions, without the need for any further information. On that basis, I consider that she's been grossly negligent with her security information.

Also, on this basis there is no duty by virtue of the PSR's for Barclays to refund these disputed transactions to Mrs H.

My final decision

So, for these reasons it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 10 August 2023.

Rona Doyle
Ombudsman