

The complaint

Mr H complains that Barclays Bank UK PLC (“Barclays”) failed to refund transactions he didn’t recognise.

What happened

Mr H reported to Barclays that two cash withdrawals had been made from an Automated Teller Machine (ATM) that he didn’t recognise. A total of £190 had been withdrawn over a two-day period and Mr H asked Barclays to refund them as he hadn’t made them himself. Barclays asked Mr H about the debit card used to make the withdrawals. Mr H confirmed he still had the card in his possession and no one else had been given it to use. He also said that no one else knew the personal identification number (PIN) for the card. Barclays arranged for a new card to be issued and cancelled the current one.

Barclays couldn’t find any compromise of the card details. They excluded the possibility of someone observing the PIN being used, so called “shoulder surfing” because the PIN hadn’t been used on a transaction for over a week. The audit data recorded the Chip on the card had been “read” by the ATM and the correct PIN used, so Barclays believed Mr H was liable for the two withdrawals.

Mr H was unhappy with Barclays decision and thought they should have obtained cctv footage to show who had used the ATM. Mr H raised a complaint and Barclays re-looked into the situation. They didn’t change their position and continued to decline any refund for the two withdrawals.

Mr H then brought his complaint to the Financial Ombudsman Service for an independent review where it was assigned to an investigator who looked into the matter. Both parties were asked to provide information about the complaint and Mr H repeated his assertion that he wasn’t responsible for the two withdrawals. He also said that he’d had a similar incident the month before which was refunded, although his card and PIN weren’t replaced.

Barclays provided details about their investigation and information about the disputed transactions.

After reviewing the available evidence, the investigator didn’t uphold Mr H’s complaint, commenting that it was Mr H’s genuine card that was used to make the transactions that he still had in his possession. It was unlikely that an unknown third party could have obtained the card and replaced it without Mr H being aware of this. The investigator ruled out anyone else in Mr H’s household from being responsible based on Mr H’s own testimony. They also didn’t think that Barclays had acted unreasonably with how they’d dealt with the original claim for a refund made by Mr H.

Mr H disagreed with the investigator’s recommendations and continued to deny making the withdrawals. He made further comments, summarised as:

- Because two locations were used to make the withdrawals, this was suspicious.

- His net worth precludes him from trying to obtain such a small amount of money from the bank.
- Barclays didn't obtain cctv footage and failed to advise Mr H of this, preventing him from acquiring it.
- He thought Barclays should report the matter to the police if they felt it was fraud.
- Mr H referred to a previous misuse of his card and said that Barclays should've replaced it and his PIN.
- He wanted a further review of his complaint.

As no agreement could be reached, the complaint has now been passed to me for a decision. As part of my own investigation, I asked Barclays to provide some further detail. In summary this was:

- After the previous incident, a new card was issued, and it was this one that was used in the ATM.
- Barclays also reference a new PIN was used.

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. The basic position is that Barclays can hold Mr H liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them, but Barclays cannot say that the use of the card and PIN 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 H'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 H.

It's not my role to say exactly what happened, but to decide whether Barclays can reasonably hold Mr H liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

Mr H has raised an issue concerning his financial wellbeing and that it wouldn't be necessary for him to try and claim the losses from Barclays. He also commented that if Barclays thought it was fraud – they should report the matter to the police. I'd like to address these comments before reviewing the evidence provided by both parties. Barclays are required to show that the payments have been authorised, otherwise they are required to refund them. Here they believe that the evidence points towards Mr H being responsible. That's the extent of the position – there's no suggestion that the matter was fraudulent, and a person's financial situation isn't generally relevant to the outcome of a complaint such as this one. I understand what Mr H is saying here – that he had no need of those funds because he's financially comfortable. But the outcome of his complaint is only based on an overall impartial and objective assessment of the available evidence.

The situation here is that there were two withdrawals from two different ATM's, which took place either side of midnight. The withdrawals didn't use the maximum available daily amount and Mr H still had his card when he reported the issue to Barclays. The use of the card either side of midnight is often associated with misuse - to extract the maximum amount from the daily limits, but they weren't triggered here, so I haven't given this a great deal of weight, nor the use of two different ATMs.

Barclays records also show his card was replaced after the previous report he made to them about another withdrawal he didn't recognise. They also commented that a new PIN was also used. So, it's apparent that Barclays did replace his card, despite what Mr H has said here. Mr H confirmed no one else knew his PIN, nor was anyone else given permission to use his card, and he excluded the possibility of any person he lived with might have used it. So, it's difficult to see how an unauthorised third party could have taken the card, found the PIN, used it and replaced it without his knowledge.

Mr H was critical of Barclays because they didn't obtain cctv from the ATMs (although I'm not sure any cctv was available). In this case, Barclays had sufficient evidence to believe Mr H was responsible, so I don't think it was unreasonable for them to base their decision on what evidence they did possess.

It doesn't require Mr H himself to use his card for him to be held responsible, so whilst these transactions may well not have been him, the overall evidence doesn't point to an unauthorised third party being responsible. If someone used the card with his knowledge, he would still be responsible, even if he didn't specifically give permission for a cash withdrawal. I don't know what actually happened here, but based on the evidence available to me, I think it's more likely than not that Mr H was responsible for these transactions, and it was reasonable for Barclays to hold him liable for the withdrawals.

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 H to accept or reject my decision before 24 October 2024.

David Perry
Ombudsman