

The complaint

Mr A complains that Barclays Bank UK PLC (“Barclays”) failed to refund transactions he didn’t recognise, closed his account and breached various standards of conduct when dealing with his dispute.

What happened

Mr A noticed two transactions on his Barclays Credit Card statement that he didn’t recognise. These transactions were made some months earlier and took place in another country that Mr A and his partner were visiting at the time.

Mr A contacted Barclays about these transactions and told them that he hadn’t made them. Barclays explained that both disputed transactions were made using the genuine card issued to Mr A and the Personal Identification Number (PIN) for the card. During Mr A’s dealings with Barclays, he said that:

- He hadn’t used this credit card whilst abroad.
- He’d taken funds from another account for use during the trip.
- No one knew his PIN for his credit card.
- He hadn’t written it down anywhere.
- The card was kept on his person or in the hotel safe whilst abroad.

Barclays asked Mr A to provide information and a declaration, which was supplied shortly after reporting the issue. After about a month, Mr A hadn’t heard anything and got back in touch with Barclays again to find out what was happening. Conversations between Mr A and Barclays took place and Mr A was asked again to provide information about the dispute. He re-sent the information to Barclays and made a complaint about the way they handled his dispute.

Barclays sent a letter to Mr A holding him liable for the disputed transactions and told him that his account was to be closed. Barclays completed their investigation into Mr A’s complaint and accepted that they’d delayed their investigation and offered £100 to recognise the level of service provided. Barclays didn’t accept Mr A’s request for a refund based on the use of the genuine card and PIN which were known only to Mr A. Barclays also told Mr A that the account closure had been reviewed and it had followed their guidelines.

Timeline of relevant events:

Date	Activity
15/4/23	2 x disputed transactions

24/7/23	Reported to Barclays and disclaimer sent to Mr A.
?	Mr A returned the disclaimer shortly after receiving it.
8/8/23	Barclays sent a chaser message was to Mr A for the return of the disclaimer.
9/8/23	Barclays record disclaimer returned.
23/8/23	Discussion about information needed and Mr A dissatisfied with Barclays progress.
29/8/23	Barclays speak with Mr A and rearrange call due to current commitments.
4/9/23	Barclays and Mr A discuss dispute and Barclays request further information. Notes said Mr A said he would close a/c if held liable.
26/9/23	Case reviewed and held liable / account closure letter sent.
5/10/23	Final response Letter sent including confirmation of account closure.

Mr A was left unhappy with how Barclays had handled his issue and brought it to the Financial Ombudsman Service for an independent review. It was assigned to an investigator who asked both parties for information about the situation.

In summary, Mr A denied it was him or anyone else with his permission who made the transactions, and he argued that Barclays couldn't hold him liable solely based on the Chip and PIN evidence. Mr A also complained that Barclays failed to meet various standards of conduct and tried to prevent him from pursuing his complaint.

Barclays continued to believe that Mr A was responsible for the disputed transactions. They argued they had the right to close the account and said the offer for £100 was still available.

After reviewing the evidence, the investigator didn't think that Barclays needed to make a refund and thought it was reasonable that they closed Mr A's account in the way they did. A second report was issued by the investigator dealing with Barclays handling of the dispute, concluding that whilst they delayed the investigation, the payment they offered was both fair and reasonable in the circumstances.

Mr A continued to disagree and asked for a further review of his complaint. Barclays also questioned the need to review aspects of the complaint dealing with their handling of the dispute.

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

I issued my provisional findings on the merits of Mr A's complaint on 29 May 2024. In my provisional findings, I explained why I intended to partly uphold Mr A's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

“What I’ve provisionally 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.

My focus is on what I think the key issues are as our rules allow me to do this and it reflects the nature of our service as an informal alternative to the courts. So, if there’s something I’ve not mentioned, it isn’t because I’ve ignored it, it’s because I’m satisfied that I don’t need to comment on every individual argument to be able to reach what I think is the right outcome.

In deciding what’s fair and reasonable in all the circumstances of a complaint, I’m required to take into account relevant: law and regulations; regulators’ rules, guidance and standards; codes of practice (including the new Consumer Duty standards referred to by Mr A in his submissions to this service); and, where appropriate, what I consider to have been good industry practice at the time.

As there are a number of different complaint points here, I’ll deal with them separately for ease of reading. Firstly, I’ll explain my thoughts concerning the disputed transactions reported by Mr A.

Disputed transactions

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 A 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 A’s account and any such transaction must be regarded as unauthorised. To start with, I’ve seen the bank’s evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr A. I’ll now need to consider the information provided by both parties to determine whether there’s sufficient evidence to hold Mr A responsible for the disputed transactions or not.

Mr A is correct when he says he can’t be held liable based purely on the Chip and PIN evidence. This information relates to the authentication of the payment and an important additional aspect is whether the overall evidence points towards consent being given. Mr A strongly denies he was responsible for these payments, so I’ve looked at the broader picture here to determine what I think is a fair outcome.

Barclays evidence is that the genuine card (not a clone) was used, together with the correct PIN. So, in order to carry out these transactions, both the card and PIN were needed. Whilst I accept that Mr A denies being responsible, the necessary steps to use the card would mean:

- Someone unknown to Mr A would have to obtain the card from his person or the hotel safe.
- They would have to know the PIN that wasn’t written down or given to anyone else.
- The card would have to be returned without Mr A being aware it had been taken.

Additionally here, the card was used over a period of about 5-6 hours, it was last used in the UK (so no opportunity to view the PIN being used “shoulder surfed”), there were no failed PIN attempts and there was still credit available on the account which wasn’t utilised.

Mr A has said he used the same PIN for all his cards, so it's possible that a thief could have observed another card being used, but on balance, I don't think the evidence supports that.

That's because any thief who may have observed the PIN being input by Mr A on his other card couldn't know that he had any other cards or that they used the same PIN, so it would seem to be a significant risk to attempt to steal his wallet or access his room and hotel safe.

Even if this was successful, a thief would be unlikely to leave available credit on the card. Far more likely a thief (who had the PIN) would continue to use it until it was blocked. It's also unlikely that a thief would then return the card to Mr A, risking being caught when they could simply dispose of it.

I don't think the delay reporting the card is particularly relevant as Mr A had up to 13 months to report the transaction. The main factors here are that Mr A was present in the country/city where the disputed transactions took place, it wasn't a cloned card, and the correct PIN was used.

I don't doubt Mr A's strength of belief here that he wasn't responsible, but I have to make my decision based on the available evidence and what I consider is likely to have happened. I just don't think there's currently a plausible explanation that an unknown third party could have carried out these transactions.

My current thoughts are that the evidence that I've considered leads me to the conclusion that, on the balance of probabilities, it was more likely than not that Mr A authorised or allowed his card details to be used to make the payments. So, taking everything into account, I currently think it's fair and reasonable for Barclays to hold Mr A responsible for both transactions.

Barclays handling of Mr A's claim.

Mr A complained about Barclays conduct when he reported the two transactions. Because some of the events Mr A has complained about are after the introduction of new Consumer Duty standards, they are relevant to my considerations.

Mr A has alleged "sludge" practices when Barclays dealt with his dispute. I've taken this to mean that he believes Barclays had put in place steps that were designed to cause him unnecessary friction when reporting his issue and ultimately to abandon his complaint.

Barclays have an obligation to provide support for their products throughout the period they're in a relationship with their customer. That includes a system for dealing with problems and complaints such as those raised by Mr A.

During the dispute/complaints process, Barclays asked Mr A for a second set of information when he'd already returned the original request some weeks earlier. I understand why Mr A feels that Barclays made the process more difficult, from his perspective it would no doubt seem an unnecessary duplication of what he'd already sent them. But, I haven't seen any evidence that supports Mr A's contention that Barclays tried to prevent him from complaining by requesting the information again, but I do agree that they could have dealt with Mr A's situation more efficiently.

I think that Barclays acceptance of the delay, their apology and the offer of £100 was an appropriate way for them to recognise the level of customer service they provided to Mr A and the frustration this caused.

Account closure

Both parties are able to close the account if they wish. If Barclays decides to close it after an account review, it must follow the appropriate terms of the agreement made between themselves and Mr A.

That agreement says:

We may close your account and require immediate repayment of your total outstanding balance for the reasons below:

- *If we reasonably believe that you've broken this agreement regularly or seriously.*
- *If you've acted fraudulently.*

I've omitted other reasons which don't apply here.

When Mr A received a letter regarding Barclays decision to hold him liable for the transactions, it also advised him of the closure of his account and required immediate repayment of the outstanding balance.

Barclays have argued that because they held Mr A liable for the fraud on his account, they were entitled to rely on the terms of the agreement to require immediate repayment.

Having thought about the circumstances here, and whilst I'm currently intending to conclude that it was fair for Barclays to hold Mr A liable for the disputed transactions, that's not evidence (in itself) that he was involved in a fraudulent attempt to avoid paying borrowed funds back to Barclays. It's the case here that Mr A had already paid the bulk of his outstanding credit (including for the two disputed transactions) before he raised it with Barclays – not the act of someone trying to avoid paying back their credit.

There's no obvious or evidence-based link that I've seen that would convince me that Barclays had met the terms of their agreement when they closed his account in the way they did. So, I don't think that Barclays acted fairly towards Mr A and I'm intending to recommend further compensation.

I asked Mr A to describe the impact on him following the notice to close his account. Mr A said the closure process came across as accusatory and he believed they used it to threaten him if he followed through with the complaint. He explained that as a loyal customer, the closure left him very stressed, and he had to find the money to pay off the balance.

I'm not surprised Mr A felt this way, given how the closure of the account and the refusal to refund were contained in the same letter. I don't think there's evidence to support Mr A's belief that Barclays were using the closure to put pressure on him, but I do accept this would have caused additional anxiety. Based on Mr A's description of the impact this had on him, I'm intending to recommend they make a further payment of £100.

I'm currently intending to:

- Conclude that Barclays acted fairly towards Mr A when they held him liable for the disputed transactions.
- Make no further recommendation in respect of the service he experienced after reporting the transactions to Barclays as I consider the offer of £100 already made is fair.
- Recommend further redress of £100 for the way his account was closed (additional

to the £100 already offered).”

I invited Mr A and Barclays to give me any more evidence and information they wanted me to consider before issuing my final decision. Barclays didn't have anything further to add and Mr A made some further comments, which in summary said:

- Barclays told him not to report the matter to the police which effected his ability to provide evidence.
- They were accusatory and threatening.
- He acknowledged the additional redress (£100) for the way his account was closed.
- He maintained that Barclays had used sludge tactics towards him.
- He argued that a thief wouldn't always max out a card until it was blocked.
- He continued to deny he was responsible for the transactions.

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 as neither party had anything further to add that would change my assessment, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision. But, I would like to address those additional points raised by Mr A.

Having listened to the available calls between the parties, I didn't think that the conversation could be construed as Barclays telling him not to report the matter to the police. It's not their role to advise regarding such matters, but they could probably have been clearer and told Mr A it's his decision to raise it with the police overseas. Although, by this point it was a number of months after the event, so it's unclear if anything could have usefully been obtained.

I also didn't think the tone of the conversations were as described by Mr A. Barclays were clear when they told Mr A about their conclusions based on the circumstances of a chip and PIN transaction such as the ones reported by Mr A, including the likely closure of his account if they held him liable.

I understand why Mr A interpreted this as pressure coming from Barclays, but I don't think that's what they were trying to do, more that they were setting out the likely outcome and presenting Mr A with a more informed choice. But there was a risk that by conflating the two issues (the disputed transaction(s) and closure of the account) this could inadvertently have prevented the continuation of the claim. That didn't happen here because Mr A maintained his complaint and as I've already made a finding about the service he received and the closure of his account; I won't be asking Barclays to do anything further.

I don't disagree with Mr A that a thief would always max out a card, which is why I didn't refer to its use in those terms in my provisional decision. But, given the specifics of this complaint and the additional factors which I've already explained, the overall picture is one that supports my original conclusions.

I hope Mr A appreciates the decision I've made regarding his complaint is based on the available evidence. There isn't a reasonable explanation for how those transactions happened, so I have to agree that Barclays acted fairly and reasonably in holding him responsible for the spending. The evidence doesn't point to or allow any other reasonable explanation.

Mr A came across as very genuine throughout his complaint and I acknowledge that matters of fraud are distressing and if he's genuinely had money stolen and has no idea how this happened, I can only imagine it must be even more frustrating. But I must deliver a fair and reasonable outcome that the evidence supports.

Overall, I think that Barclays decision was reasonable concerning the disputed transactions, but they let Mr A down with their handling of his complaint, including the way they closed the account. That's why I've concluded they should pay him an additional sum for the account closure.

My final decision

My final decision is that I uphold, in part, Mr A's complaint and in order to settle it, Barclays Bank UK PLC are now required to:

- Pay Mr A the original offer of £100 if they've not already done so and make a further payment of £100 for the way the account was closed and the impact this had on him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 July 2024.

David Perry
Ombudsman