Discrimination in Financial Dispute Resolution

Our group at Cambridge University Computer Laboratory has been monitoring electronic and online crime since 1992. These crimes typically come to notice when people see debits on their bank or credit-card statements that they do not recognise. Some of them get rapid restitution from their bankers; the rest typically take their case to the Financial Ombudsman Service; and the unlucky people who don’t find any sympathy there either often come to us as a last resort, after finding that we’ve written a number of research papers on the subject. Their cases are a valuable source of data, in addition to the published fraud statistics (which include only cases that left the banks out of pocket, not those cases where the bank blamed either the cardholder or the merchant for a fraud).

The people who lose out under the current system are overwhelmingly the less advantaged members of society: minorities, women, and the elderly. A typical recent case is Eve Russell (who is all three); her story was written up in The Times on August 20th 2011 (I attach a copy). She is one of a number of victims of a recent pattern of fraud whereby crooks get new credit cards issued on existing customer accounts. The bank claims that new cards were ordered from its call centre by people who could answer the cardholders’ security questions; but in the Russell case, Barclays cannot find the recordings, which leaves open a nagging question about whether there might be insider involvement. A number of such frauds have been reported by the BBC against Barclaycard and its customers; the issue here is that while some customers are believed when they complain and receive prompt refunds, others are treated with hostility and accused, in effect, of being complicit.

The underlying mechanism appears to be as follows. When a customer complains of fraud, the bank’s first responder takes a view of the matter depending on how profitable the customer is, and no doubt whether the customer seems impressive on the phone. First responders do not have access to technical logs, or the training to understand them, but they do typically have access to the customer’s last three months’ transactions plus the annual profile.

In dispute resolution, as in much of the rest of life, it seems that first impressions matter. More senior bank staff will usually follow the first responders’ lead rather than reconsider a case from scratch, and the Financial Ombudsman Service, in our experience, eagerly follows the bank’s line when it comes to disputes. In fact, we wrote a paper on this for Lord Hunt’s review of the Financial Ombudsman Service in 2008 pointing out that their findings for banks and against customers were often contrary to the law, the facts of the case, or both.

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1 Barclaycards ‘Hit by Fraudsters’, Sep 6 2011; at http://www.bbc.co.uk/nws/business-14762164
Following the Reddell case described in that paper, I went to see Dame Sandra Dawson, a non-executive director of Barclays, and raised with her the issue of discrimination. She was shocked to learn of the outcome, and told me that as the bank didn’t do any monitoring she’d no idea how they’d deal with any allegations of discrimination. She passed me on to the company secretary who referred me to a middle manager, where the trail went cold. Unfortunately Dame Sandra finished her term as a NED in 2009, and nothing appears to have been done. Incidentally, I also raised the dispute resolution issue with Hector Sants when he was appointed CEO of the FSA; again, I was referred to a middle manager who expressed the FSA’s satisfaction with the current state of affairs.

Since then, social attitudes to bank regulation have changed somewhat. I don’t think it’s acceptable for the poor to be shown the door while well-spoken members of the middle class get refunds – when they are both victims of the same frauds. And it is only to be expected that the first responders’ cultural attitudes, and in particular their assumptions about trust, should be reflected in the outcomes for fraud victims.

In the old days, fraud victims could at least complain to the police; however, since 2007, there has been an agreement between the banking industry and ACPO to the effect that fraud should be reported to the bank, not to the police. This caused the crime figures to fall, which delighted both the police and the Home Office; but it leaves the business of fraud investigation and dispute resolution entirely in the banks’ hands.

The banking industry’s dispute resolution procedures urgently need the application of some monitoring and quality assurance, and I hope you can nudge the FSA in this direction. So far, they seem to have been happy to accept that the banks are handling dispute resolution adequately. If so, they are falling short in their duty as the regulator.

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