



**Financial
Ombudsman
Service**

our ref **1021-1261/JXH/OMB**
your ref

Mrs E Russell
17 Pinewood Drive
Potters Bar
Hertfordshire
EN6 2BD

please write to **Financial Ombudsman Service**
South Quay Plaza
183 Marsh Wall
London
E14 9SR

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14 October 2011

Dear Mrs Russell

Your complaint about Barclays Bank Plc

Provisional Decision

The ombudsman has carefully considered all the information and evidence submitted by you and Barclays about your complaint.

Subject to any further comments and evidence that we receive from either you or Barclays, the ombudsman intends to issue a Final Decision along the lines of the enclosed Provisional Decision – a copy of which I have also sent to Barclays.

I should therefore be grateful if you would let me have any final points by 14 November 2011. Alternatively, please confirm by then that you have already provided us with everything you want us to take into account. If there is any reason why you think you might be unable to reply fully by 14 November 2011, please let us know so that we can agree extra time. The ombudsman plans to issue the Final Decision after 14 November 2011, but may be able to do so earlier if we have heard from both parties.

Yours sincerely

Fatima Fernandes
Ombudsman Assistant

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PROVISIONAL DECISION	
complaint by:	Mrs E Russell
complaint about:	Barclays Bank Plc
complaint reference:	1021-1261/JXH/OMB
date of decision:	14 October 2011

I have carefully considered all of the information and evidence submitted by Mrs Russell and Barclays Bank Plc in order to decide what is fair and reasonable in the circumstances of this complaint.

Subject to any further comments and evidence that I receive by 14 November 2011, I am minded to issue a Final Decision in the following terms.

complaint

Mrs Russell complains that Barclaycard is unfairly holding her liable for credit card transactions totalling just over £15,000 made fraudulently on her Barclaycard account.

background

Mrs Russell opened her Barclaycard account some years ago, at which time she was sent a plastic card with a number ending 0003 for use with the account, and a personal identification number (PIN) for use with the card. Over the years, renewal cards were issued routinely to Mrs Russell as each old card reached the end of its term of validity. In 2006, Mrs Russell was issued with a new PIN for the account.

The account was not used very much, and in recent times has primarily been used to pay the monthly bill for Mrs Russell's mobile phone – by means of a continuous payment authority applied each month by the mobile phone company.

Barclaycard's records for 28 June 2010 say that a call was made to report the Barclaycard as having been lost or stolen and requesting a replacement card. Barclaycard issued a replacement card ending 9002 (which I shall call the new card) which it says was delivered by courier on 1 July 2010, intended for Mrs Russell's address but probably mistakenly put through the letterbox of Mrs Russell's neighbour.

The transactions disputed by Mrs Russell began on 5 July 2010 and continued until 27 July 2010. By then, the balance on the account (including charges and interest) had risen to £15,066.64 against the credit limit of £10,000 shown on the statement dated 2 August 2010.

There were almost 70 disputed transactions including withdrawals made from cash machines, point of sale transactions from retail outlets such as supermarkets, sports wear shops and jewellers, and some payments to service providers such as a repair garage and a glass and mirror business.

On 4 August 2010, Barclaycard blocked the card due to suspicious activity.

Mrs Russell telephoned Barclaycard on receipt of the statement dated 2 August 2010 showing the disputed transactions. Communications followed between Mrs Russell, her solicitor, Barclaycard and a police officer (after Mrs Russell reported the transactions to the police).

Mrs Russell said that it was not she who had either requested the new card or made the transactions that the card was used for. She believed that a fraud had been perpetrated against her and she should not be liable for the transactions.

Barclaycard argued that Mrs Russell's 2006 PIN (which Mrs Russell said was known only to her) had been used for the transactions with the new card and so it could not be certain that the spending had not been carried out by Mrs Russell or with her knowledge. It continued to hold her liable for the debt caused by the disputed transactions.

Mrs Russell referred her complaint to this service, where one of our adjudicators looked into what had happened. She considered that, whilst she did not doubt Mrs Russell's integrity, she could not conclude – from the available evidence – that Barclaycard should reimburse the disputed transactions.

Mrs Russell did not agree with the adjudicator's conclusions and asked for her complaint to be reviewed by an ombudsman, as she was entitled to do. She provided some further observations about what had happened, and reiterated some of the earlier points she had made which she felt had not been taken sufficient account of during our investigation of her complaint.

my provisional findings

Mrs Russell has explained that she remains very sceptical about the evidence Barclaycard has produced to support its stance that she is liable for this debt. She maintains that she had nothing to do with either the issue of the new card or the transactions that it was used to make, and does not consider that the evidence is sufficient to establish her liability.

She has also taken advice from University of Cambridge Computer Laboratory which sets out the likelihood of insider fraud at Barclaycard and Mrs Russell is particularly concerned as she believes that her age, gender and ethnicity make her more vulnerable than usual to this type of fraud.

I agree with Mrs Russell that, in disputed card transaction complaints, the possible involvement of a dishonest employee must be considered properly, alongside all the other possible scenarios. I am also mindful of the material that the University of Cambridge Computer Laboratory has produced about technical issues to do with card fraud.

During my review of this complaint, I have examined the statements and evidence that Mrs Russell and Barclaycard have provided. I have focused on the issues that I consider are central to the outcome of this complaint and, wherever appropriate, I have summarised the relevant law and the evidence so as to make it clear to the parties why I have reached this provisional decision.

I am satisfied, from the audit trail evidence that Barclaycard has provided, that all the disputed transactions were made using the new card – and not with the old card that Mrs Russell had in her possession, or some form of copy of it.

Mrs Russell has, throughout, been adamant that it was not she who requested that new card. Barclaycard has been less clear in its evidence on this point, offering different opinions about whether or not the person making the call sounded like Mrs Russell.

Although Barclaycard initially had a recording of the call in which the new card was requested, it would not allow Mrs Russell to have a copy of it – citing data protection as the reason why she could not have it, although I am not aware of any data protection rule that would have prevented Barclaycard from sharing that recording in the circumstances. Barclaycard then allowed the recording of the call to be destroyed after it had completed its investigation of Mrs Russell's complaint, rather than retaining it in case Mrs Russell did not accept its conclusions.

Barclaycard has provided details of the security questions that it says were answered correctly by whoever requested the new card. Those questions were not, in my opinion, ones that only Mrs Russell could have answered. I doubt that a total stranger could have answered all the questions correctly, but someone with a reasonable degree of knowledge of Mrs Russell probably could.

In all the circumstances, I do not consider that I can reliably conclude, from the evidence, that Mrs Russell made the call requesting the issue of a new card on her account.

There is also some confusion about where the new card actually went. Barclaycard says the card was issued to Mrs Russell's usual home address in Potter's Bar. However, the photographic evidence produced by the courier which Barclaycard used to deliver the card appears to show that it was actually put through the letter box of a neighbouring house in the residential development where Mrs Russell lives.

Barclaycard seems eventually to have accepted that the card was indeed mis-delivered, but says it *'had no reason to believe'* that the card was not then passed on to Mrs Russell. Mrs Russell says that she knows these neighbours slightly, and has asked them about this, but was told that they did not recall receiving any post meant for her. Looking at all the evidence, I do not consider that I can reliably conclude that Mrs Russell received the card and I think it more likely that she did not.

The disputed transactions were made using cash machines in the London area, and various retail transactions made mainly (though not exclusively) in north and north east London. There were also several significant payments to a business called Direct Glazing in Potter's Bar, apparently a framing and glazing business that sells mirrors and other glazed products.

Barclaycard has provided evidence from some of the retailers where the disputed transactions were made. Mrs Russell has provided evidence from an executive of the insurance company where she works, as well as evidence from a clinic which she attended for a medical procedure on a day when some of the disputed transactions were made. From the overall evidence I consider that I can find, with a good degree of confidence, that Mrs Russell did not make the disputed transactions herself.

The question of whether Mrs Russell authorised someone else to make the transactions must also be considered. On this point, Barclaycard says that it *"cannot be certain"* that Mrs Russell did not authorise the payments, since no new PIN had been issued on Mrs Russell's Barclaycard account since 2006 and as Mrs Russell has consistently said that there is no way anyone else could have known her PIN.

