



**Financial
Ombudsman
Service**

our ref 1021-1261/AJ/BC58
your ref

Mrs E Russell
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Potters Bar
Hertfordshire
EN6 2BD

please write to **Financial Ombudsman Service**
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20 July 2011

Dear Mrs Russell

Your complaint about Barclays Bank Plc

I am writing to set out my assessment of your complaint. In reaching my assessment, I have considered everything that you and the business have sent us.

Complaint

This complaint is about your Barclaycard.

Circumstances

You have told me that a series of unauthorised transactions were made from your Barclaycard in July 2010 and that you would like these to be refunded in settlement of the dispute.

Findings

From the statements that I have received I can see that a series of transactions totalling over £15,000 were made from your account throughout July 2010, all of which you have disputed.

As you are aware, Barclaycard has rejected your complaint, as most of the transactions that you flagged up as having been made fraudulently were successful as the original card and PIN were used. Barclaycard therefore could not conclude that the transactions were not unauthorised.

The transactions that you have disputed were all made from a new card that was issued after Barclaycard received a telephone call on 28 June 2010 informing it that the existing card (the one that you remain in possession of) had been lost in a bar in London. You have told me that you did not make this call. However, Barclaycard has us told us that whoever made this call passed the necessary security checks on your account. As a new PIN number was not ordered by the caller, the existing PIN that was applicable to your old card (and had not been updated by Barclaycard since November 2006) remained valid.

In cases like these where there is a dispute about what has taken place, I will base my view on what I consider to be most likely to have happened at the time, in the light of all the evidence and given the circumstances.

There are three possibilities as to what has occurred in this case:

- 1) That the card was copied (cloned) and the transactions made fraudulently with the cloned card.
- 2) That your card was stolen and the transactions carried out by the thief.
- 3) That you carried out the transactions or authorised someone to carry them out on your behalf.

When considering the first option, being that the card was cloned, I have requested documentation from Barclaycard and it has provided me with records of the transactions in question. These confirm that the majority of the disputed transactions were made using your personal identification number (PIN) and the unique microchip embedded in your card. We are not aware of any incidences of a genuine chip being copied. I therefore cannot conclude that the transactions were made using a cloned card. Furthermore, as you have told us that all of the transactions were made from a card that you have stated you did not receive, there appears to be no question that they were made on a cloned card.

I shall now look at the option that the card was stolen and the transactions were made by a thief. The majority of the transactions were made using your personal identification number (PIN), and the documentation I have been provided with by Barclaycard shows that this was entered correctly at the first attempt. I am satisfied that the PIN was held in an encrypted format and to date we have not seen any incidences or persuasive evidence (including the information you sent me regarding Professor Ross Anderson) of a PIN being extracted from an encrypted format on a card.

You have told us that the replacement card that was ordered on 28 June 2010 was not received by you and have provided evidence that it may have been delivered to a neighbour's address. However, as whoever received the card was able to carry out the transactions as they were aware of the PIN, I cannot conclude that the card was not later returned to you, or someone that you had authorised to use the card by disclosing the PIN to them.

You have stated that there has been absolutely no scope for anyone to ever have become aware of your PIN as you have not disclosed it to any third parties, or kept a written record that was accessible by anyone other than yourself. However, the disputed transactions were only able to be carried out successfully as the person that made them was aware of the PIN for the card. I do not consider it to be most likely that even if the card was not delivered to you, that an unknown recipient would have been able to correctly guess the PIN on the first attempt.

As the PIN had not been changed by Barclaycard since November 2006, there has been no opportunity for a third party to have intercepted any PIN details for your account in the post etc. You have told me that you did not report your card lost to Barclaycard on 28 June 2010 and that someone must have been trying to take over your account. However, I do not consider this to be most likely, as when an account takeover is attempted by a third party, we would expect them to order a new PIN number when requesting a new card for the account.

As this did not occur, whoever made the call was likely to have been aware of your PIN number (if it was their intention to intercept the new card and make transactions from it) as they did not order a new one.

Based on the information I have and reasons I have mentioned earlier I do not consider it is most likely that the transactions were carried out by an unknown fraudster.

You have complained that Barclaycard should not have allowed all of the transactions to have taken place as the credit limit on the card was only £10,000. However, Barclaycard appears to have been acting within the terms and conditions of the account when allowing this. While I consider the amount that your account was allowed to exceed the agreed limit by to be excessive, this was a commercial decision by Barclaycard, which this service is not able to suggest was incorrect.

Conclusions

Therefore after careful consideration and based on all the evidence I have seen, my conclusion is that I do not believe that I can safely conclude, on the balance of probabilities, that the disputed transactions were made without your authority.

Because of this, I have to tell you that I am unable to recommend that your complaint should be upheld.

I am not questioning your integrity but, in circumstances such as yours, we have to make a decision regarding what is most likely to have happened on the balance of probabilities and ultimately, we have to make a judgement as to whether the outcome is justified by the circumstances. In your case, based on the available evidence, I cannot conclude that Barclaycard must reimburse the cost of the disputed transactions.

I appreciate that this is likely to come as a disappointment to you. I know that this is not the outcome you were hoping for. But I hope that my explanation has been helpful in setting out clearly why I have taken this view.

However, if you disagree with how I have reached my conclusions, please write and tell me by 3 August 2011 – setting out your reasons and including any evidence that you have not already provided and that you think is important to your case. Could you please let me know now, if you plan to reply fully but do not think you will be able to meet that deadline.

As we explain in our leaflet, *your complaint and the ombudsman*, consumers have the right to ask an ombudsman to review their case – as the final stage in our process. But if we do not hear from you by 3 August 2011, we will assume that you have decided not to pursue the complaint further.

Yours sincerely



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Adjudicator

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