

complaint

Mr K complains that Barclays Bank Plc ("Barclaycard") declined to refund him the value of debit transactions made on three credit card accounts. Mr K says he did not authorise these transactions. Three credit transactions made to the accounts for a sizeable total sum are also disputed.

background

Mr K was travelling abroad and he says that he took all his cards with him. He says that he was telephoned by the bank shortly before he left advising him that a card had been cloned and not to use it. He says he stopped using the card but he kept it on him, along with the other two.

He last used any of his cards, on the day he travelled abroad, for a retail transaction and he put the card back in his wallet. He noticed the disputed transactions, on his return from abroad, on his statements. He contacted the bank and destroyed his cards.

Mr K says he has never given the cards to a third party or disclosed the personal identification number ("PIN") to anyone. He also says the transactions are inconsistent with his previous spending and Barclaycard should have noticed this.

Compensation has been sought by Mr K for the manner in which the bank dealt with his dispute over the transactions, particularly in respect of arrangements over a meeting, the timescale over which matters have been dealt with and the approach the bank has taken to recover the debit balance created by the disputed transactions.

Our adjudicator did not recommend that the complaint should be upheld.

She did not consider that she could say that the bank's security arrangements had failed. And as regards the credits made to the accounts, the adjudicator noted that that they were received from accounts Mr K held with another bank. She found it unusual that a fraudster would have deposited sums to another account held by the party who they were defrauding given there is always a chance accounts could be blocked at any time, leaving the funds unavailable to access.

In respect of the debit transactions, the adjudicator was satisfied that they were made with the chip in the cards being read and the relevant PIN being correctly entered. The transactions were all undertaken in the UK with the genuine card being used.

The disputed transactions also stopped after the cards were blocked, with no attempts to use the cards after cancellation. This suggested to the adjudicator that the person undertaking the transactions was aware that the card had been cancelled at the time.

And the bank has no record of a call made to Mr K for any of the cards, although the adjudicator found it unlikely that the bank would have made a call to Mr K informing him that the card had been cloned since this was not actually the case.

The adjudicator had regard for all evidence presented, in particular the discrepancy between the evidence of the bank as to how the transactions were carried out – and that Mr K says he had the cards with him, abroad; but also that she could not see how an unknown third party fraudster could have gained access to all the PINs for the three cards without Mr K's

consent. She concluded that there was not enough evidence to conclude that Mr K did not authorise the transactions or authorise someone else to undertake the transactions. As such she did not recommend that the bank should not hold Mr K liable for the transactions in dispute.

The adjudicator also considered Mr K was appropriately given several opportunities by the bank to discuss the disputed transactions and that he was not persuaded to not do so by it, or indeed this organisation as has been suggested. She also did not consider that she could say that the process for dealing with Mr K's dispute of the transactions had taken an inappropriately long time.

Mr K has asked that an ombudsman review his complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities – that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

Having taken account of all the evidence available to me, I agree with the findings and conclusions of the adjudicator and for the same reasons. Put simply, the bank may hold Mr K liable for the disputed transactions if sufficient evidence is put forward to show that he made (or was involved in) the transactions himself.

Mr K is concerned that the fraud was carried out by someone at Barclaycard. He is also concerned that the adjudicator did not establish more detail about the fraud that Mr K said took place on his accounts with another bank. He says that for him to have been involved with the fraud on his accounts would have been out of character for him. Finally, Mr K maintains his concern about the process adopted for dealing with his dispute and that the bank has not chosen to pursue him for repayment of the debt through legal channels rather than by use of debt recovery agents.

As regards Mr K's belief that fraud has been undertaken by a member of the bank's staff, while it remains that I cannot rule that out entirely, I have seen no evidence that this occurred, nor has the bank made me aware that any exists and I accept that if the bank had identified any such issue, on balance, it would have dealt with the matter without the need for Mr K to refer his complaint here.

I am left, therefore, to consider the issue of the blatantly contradictory evidence of the bank's records reflecting that the original card was used, and PIN entered correctly, in the United Kingdom, and Mr K being abroad at the time and his statement that he had his cards with him. Also, he can offer no explanation as to how anyone would know the PIN.

I accept what Mr K says about how unlikely it would be for someone of his character to be involved in the fraud but it is not for me to determine how the transactions were carried out, or by who; simply to conclude whether the bank are entitled to hold Mr K liable for repayment of the debit balance created on the credit card accounts.

I am also not persuaded that it is relevant as to how the fraud that Mr K says occurred on his account with another bank was carried out. But I do also find it unusual that funds were

transferred to another of Mr K's accounts. Taking everything into account, and in particular the contradictory evidence from each party about where the cards were when the disputed transactions took place, I agree with the adjudicator that it would not be safe to conclude that they were not made by Mr K or that he otherwise authorised them. And on that basis, I do not consider that I can fairly and reasonably ask the bank to refund the value of the disputed transactions.

I have also considered the history of the dealings between the bank and Mr K, and where they have been facilitated by this organisation, and I can see no basis for me making an award against, or direction to, the bank for its involvement with Mr K. I note that the bank has used debt recovery agents to contact Mr K but that is not in itself inappropriate. It is ultimately a matter for the bank to decide whether it uses court procedures to pursue Mr K for repayment.

my final decision

My final decision is that I do not uphold this complaint.

Ray Neighbour
ombudsman