

FIPR Submission

to The Hunt Review

of the Financial Ombudsman Service

1. The Foundation for Information Policy Research (FIPR) is the leading think tank for Internet policy in Britain. It studies the interaction between IT, Government, business and civil society. It researches policy implications and alternatives, and promotes better understanding and dialogue between business, Government and NGOs across Europe.
2. The two authors of this report are Ross Anderson and Nicholas Bohm. Ross Anderson is Professor of Security Engineering at Cambridge University, and the author of many of the most important and widely-cited publications on the security of automatic teller machines and electronic funds transfer systems – a selection of which are cited in the appendix. Nicholas Bohm is a retired solicitor, a member of the Law Society’s Electronic Law Committee, and an author of a study of liability assignment in electronic banking systems, which is also cited in the appendix.
3. The dispute resolution procedure offered by the Financial Ombudsman Service is quite unsatisfactory. In this we are not referring to the cosmetic aspects of the service, but to the quality of justice that it delivers. As an example of unacceptably poor decision-making, we present in Ap-

pendix B a bundle of documents relating to a complaint made against Barclays Bank by Donald and Hazel Reddell of Peterborough, which is included with their permission. This is just a sample of a type of complaint that is very common; one of us (Anderson) receives a regular stream of such complaints from cardholders who have complained about fraudulent transaction and been told, by their card issuer and then by the ombudsman, that as the bank's systems are secure, they must be responsible for the transaction. There have been numerous TV and radio programs and press articles about this problem, going back over 15 years now. The programmes include 'Tonight with Trevor MacDonald' (twice) and 'Watchdog'. In these programmes, many credible witnesses have claimed to have been victims of fraud, for which bank spokesmen disclaimed all liability; the banks' explanations have been criticised as false and misleading by many experts including the two authors. In fact the Reddells contacted Trevor MacDonald after his first show and appeared on his second; they have still not received compensation from Barclays Bank.

4. In the Reddell case, we note first that a pattern of fraud was reported in the press. A very typical cause of fraud clusters is that a criminal has attached a skimmer to a cash machine – a device that copies the card magnetic strip as it's inserted, and also contains a pinhole camera to capture the PIN. A magnetic-strip copy of the card is then made and used. Skimmers are advertised for sale online for \$500 and incidents of

their use are widely reported.

5. We note also that in most U.S. states, security-breach disclosure laws compel a bank on whose ATM a skimmer has been discovered to write to all the cardholders that have used the machine alerting them to the possibility of fraud and advising that they check their bank statements. FIPR has on several occasions called for such a law. The House of Lords Science and Technology Committee's inquiry into Personal Internet Security recommended that the UK government introduce such a law, and the European Commission has a similar plan. However, at present, the government has refused, and our suggestion to APACS that banks notify affected customers anyway brought the (incorrect) reply that it would not be feasible.
6. The Reddells claim that they only used the card in an ATM once – and that was in a Barclays machine in Peterborough to change the PIN after the card was received. At all other material times the card was kept in a safe at their home, for use only in emergencies.
7. They got a bank statement in February and found transactions they did not recognise, totalling £3K, made at nearby cash machines and exhausting their credit. They complained but were told that the card must have been used: see letter from Mr A Liversage, Mar 14 2006 and letter from D Holland, May 30 2006. (We will return later to discuss the arguments in the Holland letter in particular.)

8. In such cases it is common for banks to produce a record that claims the transaction was ‘chip read’, or words to that effect. They claim that as a result the card was not a magnetic-strip copy and accordingly the customer must have made the transaction or colluded in it.
9. We do not believe this. First, it is indeed possible to copy card data to a chip card. What appears to be the most common way of doing this, the so-called ‘yes card’, will accept a copy of data from a stolen card and will do a transaction with any PIN. This can be detected if the ATM or terminal at which the transaction is performed is online to the card-issuing bank, but not usually otherwise.
10. In order to understand why, we will briefly describe the different levels of authentication available to a bank to determine whether an incoming transaction is from a genuine card.
 - (a) the magnetic strip on a bank card has had, since about 1989, a card verification value or CVV – a three digit security code similar to (but different in value from) the security code on the signature strip. If the correct CVV is presented, then either the card is genuine, or it’s a copy made by someone who had access to the data from the strip (or chip) of the genuine card.
 - (b) the chip has a ‘Signed Static Application Data’ certificate, or SSAD certificate, which contains the magnetic strip data, plus a digital signature from the issuing bank. If the correct SSAD

certificate is also presented, then either the card is genuine, or it's a copy (such as a yes card) made by someone who had access to the data from the chip of the genuine card.

- (c) the card chip contains a secret key with which it computes a transaction certificate (a message authentication code computed on the transaction details). The secret key is not available to a yes card. Thus if the correct transaction certificate is presented, then either the card is genuine, or a high-tech attack is being used – perhaps the transaction is being relayed from the genuine card, or a corrupt employee at the bank has sold key material to criminals, or a criminal gang has mastered the technology to extract secret keys from stolen cards.

Although attacks of the third type have been demonstrated in the laboratory, the attacks seen in the field in 2006 all appear to fall into the first two categories. A customer card is copied either to the magnetic strip, perhaps of a card with a dead chip so the ATM will do a transaction in magnetic-strip fallback mode, or to a yescard to fool a 'chip and PIN' terminal authorised to accept transactions offline.

11. The principal diagnostic question to ask, therefore, is whether the disputed transactions had (a) correct CVVs (b) correct SSAD certificates (c) correct transaction certificates. If only the CVV was correct, then the transaction could have been carried out with a magnetic strip clone;

and if only the SSAD certificate was correct, the transaction could have been carried out with a yes card.

12. In a number of cases, civil and criminal, banks have in the first instance offered as evidence simply a printout saying that a chip was read. But this is not primary evidence. The primary evidence consists of the transaction logs containing authentication data such as CVVs, SSAD certificates and transaction certificates, plus subsidiary authentication data (application request and response cryptograms), and any CCTV footage that shows who actually made the disputed transactions. We will discuss this further below.
13. We see in the ombudsman's decision in the Reddell case the key finding 'I am satisfied the card used to make the withdrawals was issued to – and received by – you; this is evidenced by fact (sic) that the Firm's records show the card was Chip impregnated and read'. Quite apart from the lack of proofreading and of accurate terminology, in this case the adjudicator has been quite careless in accepting secondary evidence that may have been misunderstood (or misrepresented) by the bank, plus the bank's assurances that its systems are secure. (It must also be said that lack of care appears pervasive in FOS decisions.)
14. A record saying 'chip read' proves little. Indeed the 'chip read' flag in the records of at least one bank, in a case dealt with by one of us, appears to mean 'either a CVV was verified or a SSAD certificate was

read'. Thus, in that case, a magnetic strip card clone could have been used.

15. In the case of some other banks, we understand that the 'chip read' flag could mean one of a number of things, none of which establishes that a transaction certificate was correctly verified:

- (a) The ATM had a chip reader fitted;
- (b) The card's magnetic strip indicated that a chip should be present;
- (c) Electrical contact was made with the chip, even although a correct certificate could not be read, and the device fell back to magnetic-strip processing;
- (d) The ATM service code said that a transaction was made using the chip, regardless of whether the transaction certificate was correct or not (the ATM cannot check this as the key used to compute the certificate is available only to the card and the bank that issued it).

16. As a result, a finder of fact who wishes to establish that the fraud was either a result of collusion by the customer or caused by one of the more sophisticated attacks referred to in section 10(c) above must check the transaction certificate, which is the primary evidence, rather than rely on a claim by the bank that the transaction was 'chip read'.

17. In other words, the ombudsman service has been accepting at face value secondary and inaccurate evidence misrepresenting the true significance of the underlying primary evidence. Its adjudicators also appear unable to distinguish clearly between the sophisticated attacks referred to in section 10(c), and the very easy and common attacks described in section 10(a) and 10(b).
18. The consequences of the doctrine that ‘bank systems are secure’ can be severe. In case after case, ordinary people who come across as dependable witnesses claim that they did not make certain transactions. The banks claim that they must have done, and the ombudsman routinely backs the banks.
19. We would urge you to look closely and sceptically at whatever figures the ombudsman offers you about the proportion of cases in which it had found for the customer or the bank. A specific area of concern is that very few of the bank customers who come to our attention, by way of a complaint of last resort, are middle-class white male British citizens. There appears to be some systematic bias in that unsuccessful complainants seem disproportionately likely to be foreign, or ethnic minority, or female, or (as in the Reddell’s case) working-class pensioners. We simply have no idea whether this arises out of bias among the bank officials who are first responders in the call centres, among the managers who review complaints, or in the ombudsman service. Now

at section 3.10 of your consultation document, you raise the issue of vulnerable consumers. If you could assure the public that the ombudsman treats all complainants equally badly, then that at least would enable attention to be focussed elsewhere.

20. The Reddell case also nicely illustrates many other problems that arise in other cases too. For example, the bank sent its debt collectors against the Reddells before the ombudsman had made a final decision, as if the outcome were a foregone conclusion; this is a feature of other cases and other banks.
21. Second, the ombudsman routinely displays ignorance of technical detail. The Reddell finding says ‘the cash machine searches the Chip for the PIN, which is in encoded form’. This is untrue. According to the SDA version of the EMV protocol that Barclays and other UK banks were using at all relevant times, the chip stores the PIN in clear text, the PIN is sent to it in clear by the terminal, and the card does the comparison.
22. Third, the legal reasoning of the ombudsman service is defective. The finding says ‘So, in order to uphold your complaint, I must be sufficiently persuaded that your version of events is *more likely* than the Firm’s (not just as likely).’ But this is clearly wrong in law: the bank seeks to debit the customer’s account, and it is elementary banking law that if its authority to do so is disputed, the burden of proof is on the

bank.

23. In this context, we would draw your attention to a speech made by the Chief Ombudsman on 6 June 2001, which is available online at <http://www.obo.org.uk/news/speech/chantrey-vellacott-dfk.htm>, in which he quotes Professor Richard Nobles asking ‘whether it is appropriate for an official who is not a regulator to decide complaints against private parties by reference to standards and remedies that differ from those available in the courts. The resounding answer provided by the courts themselves is no’. To this the Chief Ombudsman replies, ‘I hope that is too depressing a conclusion and that the judges would appreciate that the benefits of operating as alternative dispute resolvers should not be abandoned by straight-jacketing us into a court or tribunal model’. He goes on to say in his summing-up, ‘We do not have to pretend to “find” what the law is. We unashamedly make new “law”.’ He also states ‘The ombudsmen are not bound by the doctrine of precedent, but we do aim for consistency’.

24. His service’s decisions do at least seem to be consistently defective. We would like to draw your attention to two further cases. The first is documented online at <http://www.lightbluetouchpaper.org/2007/02/08/>. (We can put you in touch with the customer in question should you wish.) In that finding, the ombudsman simply states ‘Although you question The Firm’s security systems, I consider that the

audit trail provided is in a format utilised by several major banks and therefore can be relied upon.’ This is astounding reasoning for a body exercising a judicial function; are all witness statements true if they are entered in the standard format police paperwork? It also confirms the suspicion – that also arises from many other cases we’ve seen – that the ombudsman’s adjudicators simply do not work with primary material such as system logs (and would probably not understand them anyway).

25. The second additional case is that of Lydia Truong, and the decision in this case is included at Appendix C with her permission. This follows exactly the same pattern as the other two, and says ‘The bank has confirmed that your card was a Chip and PIN card. This means that on each occasion your card was used the cash machines read the Chip, which was confirmed by the Firm’s audit trails.’ At that time, the banks denied that UK ATMs would fall back to performing a magnetic strip transaction if the chip was unreadable; this has since been admitted (since colleagues of ours performed the experiment and told the press). Yet here we see the banks’ untruthful claim incorporated uncritically into the ombudsman’s reasoning. The decision is also internally inconsistent as the adjudicator says that ‘there is inadequate clear, conclusive evidence one way or the other’ but goes on to treat the bank’s audit trails as conclusive and to accuse Ms Truong of conspiracy to defraud.

26. The incompetence (both technical and legal) of the ombudsman's adjudicators can have even more serious consequences. In two cases known to us directly, people have been prosecuted for attempted fraud after complaining of 'phantom withdrawals'. The first such case, *R v Munden*, was somewhat over a decade ago and is described in reference 2 of Appendix A; the second case is ongoing.
27. So, when conducting your detailed review, we suggest that you investigate first, whether the ombudsman's adjudicators access primary evidence such as the banks' logs. If they were used to dealing with primary material than we might expect them to write more convincing decisions; if they don't, then they are adjudicating cases by uncritically accepting secondary evidence provided by one of the parties. For example the Holland letter referred to in section 7 above is really pleading rather than evidence, and avoids making any clear and testable claims about whether a transaction certificate was verified.
28. We suggest you investigate next who trains the adjudicators, and how. Are they trained by bank staff, or by independent experts? Or are they simply unqualified staff who apply predetermined formulae to deal with complaints? In that case, we believe that you should publish the formulae that have been used up till now. We realise that the FOS is (unfortunately) not covered by Freedom of Information legislation but sunlight is still a good disinfectant.

29. We would like also to bring to your attention the fact that such matters are handled much better in the USA, thanks to the decision in *Dorothy Judd v Citibank*, 435 NYS, 2d series, pp 210–212. In that case, Dorothy Judd claimed that she had not made a number of ATM transactions; Citibank argued that its systems were secure and so she must have done. The judge ruled that Citibank was wrong in law as its argument placed an unmeetable burden or proof of the plaintiff. Judd has since been reflected in Regulation E, as a result of which the burden of proof in such cases in the USA lies on the bank – not only formally, as in the UK, but effectively in practice. A bank wishing to contest a customer’s dispute of an ATM transaction is normally expected to provide a photo from the camera in the ATM. This saves U.S. bank customers from the sort of trouble the Reddells experienced. We would point out also that, in evidence before the House of Lords inquiry mentioned earlier, APACS claimed that defrauded customers do indeed get their money back; their lordships recommended that this be given the force of law, but the Government did not agree.
30. There do not seem to be any recent reported cases in the UK. This is probably because the law is clear. The FOS is failing to give it effect both because it does not understand it correctly – see paragraph 22 above – and because it is relying on unsatisfactory evidence and on what it mistakenly believes to be its own expertise in the security field. The FOS adjudicators need to be re-educated to understand

what evidence they should be seeking, how to understand it, and how to apply the burden of proof correctly. In doing so, the FOS would in effect be challenging the banks' assertions about the security of their own systems. It may be expecting too much of a service funded by the banks that it should take quite so independent a stance.

31. If internal reform isn't feasible, then Parliament should empower complainants to take their disputes directly to the courts. The main hurdle at present is of course the UK costs regime. If we moved to the U.S. rules whereby each party pays its own costs (or even to the German system whereby the amount that a bank could recoup from a customer is limited), then the courts could sort out these issues, as they have indeed done in America. This need not mean an avalanche of litigation; it would take only one or two precedents, such as *Judd*, to correct the behaviour of the industry. And as the large financial groups all operate happily and profitably in the USA, they cannot plausibly claim that such a regime would be intolerable.

32. We observe in passing that the limited protection from some costs afforded by the use of the small claims track is insufficient to meet the need. Even where the relevant financial limit applies, the protection depends on discretionary allocation of a case to the relevant track, upon which the litigant cannot rely; and it allows witness expenses to be claimed, which in specialist cases might seem likely to be so large as to

deter impecunious litigants.

33. However, the present system is not sustainable. The decisions of the Financial Ombudsman Service are an affront to reason and justice.

Ross Anderson

Nicholas Bohm

January 15th 2008

Appendix A

Ross Anderson is Professor of Security Engineering at Cambridge University. Security engineering is the art and science of building systems that remain dependable in the face of malice, error and mischance. He is the author of the textbook ‘Security Engineering – A Guide to Building Dependable Distributed Systems’ and over a hundred research papers on the topic. Prior to becoming an academic in 1992, he worked for many years in industry, where he was involved in designing equipment, writing software and consulting on information security and cryptography; he also worked for a number of banks, most recently Standard Chartered Bank in 1989 where he was responsible for designing the entire security architecture for all the bank’s retail operations in Asia. He also consulted for many firms that sell information security products to banks, including PIN entry devices and the cryptographic processors that are used to secure ATM transactions.

Since his move to academia in 1992, the security of financial transaction processing systems has remained a research interest. He is an author of many of the most important and widely-cited publications on the security of ATMs, smartcards and cryptographic processors, including

1. “Why Cryptosystems Fail” in *Communications of the ACM* vol 37 no 11 (November 1994) pp 32–40

2. “Liability and Computer Security – Nine Principles”, in *Computer Security – ESORICS 94*, Springer LNCS vol 875 pp 231–245
3. “Tamper Resistance – a Cautionary Note” (with MG Kuhn), in *Proceedings of the Second Usenix Workshop on Electronic Commerce* (Nov 96) pp 1–11
4. “Why Information Security is Hard – An Economic Perspective”, in *Proceedings of the Seventeenth Computer Security Applications Conference* IEEE Computer Society Press (2001), ISBN 0-7695-1405-7, pp 358–365
5. “Protocol Analysis, Composability and Computation” (with Mike Bond), in *Computer Systems: Theory, Technology and Applications*, Springer 2003 pp 7–10
6. “Chip and Spin” (with Mike Bond and Steven Murdoch), in *Computer Security Journal* v 22 no 2 (2006) pp 1–6
7. “Cryptographic Processors – A Survey” (with Mike Bond, Jolyon Clulow and Sergei Skorobogatov), Computer Laboratory Technical Report no. 641 (July 2005), shortened version in *Proc. IEEE* v 94 no 2 (Feb 2006) pp 357–369

These papers, and his other papers on information security, may be downloaded from www.ross-anderson.com.

Anderson has acted as an expert witness in a large number of cases involving disputed electronic banking transactions, both in the UK and abroad, including both civil and criminal matters. He has also been asked on many occasions to assist parliamentary committees on matters of information security, with two recent examples being the Lords Science and Technology Committee's inquiry into Personal Internet Security (at which he testified) and the Health Select Committee's inquiry into the Electronic Patient Record (at which he was a Special Adviser). He also chairs the Foundation for Information Policy Research.

Nicholas Bohm is the General Counsel of the Foundation for Information Policy Research. He was admitted a solicitor in December 1968. In 1972 he joined Norton Rose, where he became a partner in 1975. He practised as a commercial and corporate lawyer, dealing with commercial, intellectual property, corporate, insolvency, tax and other legal issues arising out of trading structures, acquisitions and disposals of businesses, corporate reorganisations, research and development contracts, computer system and other technology contracts, joint ventures and other transactions and problems.

From 1987 to 1994 he was the firm's technology partner, with responsibility for the application of technology to the firm's practice. From 1994 he has practised as an independent consultant, taking a special interest in the technical, legal and social issues arising out of the development of the Internet and its use in electronic commerce. He retired from practice in 2006.

Bohm is an author, together with Ian Brown and Brian Gladman, of “Electronic Commerce: Who Carries the Risk of Fraud?”, *Journal of Information Law and Technology*, October 2000, at <http://elj.warwick.ac.uk/jilt/00-3/bohm.html>.

The authors are grateful to Professor Douwe Korff, Maurice Frankel, William Heath and Paul Whitehouse of the FIPR Advisory Council, and to Alexander Korff of Clifford Chance, for comments on drafts of this submission.

Appendix B

Case papers – Donald and Hazel Reddell

More fall victim to card cloning scam

BANKS are issuing safety tips after scores of Peterborough people have been defrauded out of tens of thousands of pounds in card cloning scams.

More victims are emerging daily since *The Evening Telegraph* revealed on Friday that fraudsters have been syphoning off thousands of pounds from people's accounts in the city.

Now people are being urged to keep a vigilant eye on their accounts in a bid to spot any unusual activity.

Norwich & Peterborough Building Society spokeswoman Alison Rolls said: "N&P is aware of the recent incidents, and is working closely with affected customers and liaising with the police.

"We have contacted as many customers affected as we have been able to identify, to provide advice and guidance."

Barclays also confirmed it was aware of cloning incidents in the city and was investigating.

Spokesman Andrew Bond said: "It is important for customers to know that they will not suffer any loss as a result of this activity. Customers should be on the lookout for anything suspicious about cash machines, such as devices attached to the ATM."

Lloyds TSB spokeswoman Eleanor Hughes said the bank had a number of customers reporting fraudulent transactions in Peterborough.

She said: "We advise customers to regularly check their statements for unusual transactions,

shield their PIN when using a card terminal or ATM and never let cards out of their sight."

Meanwhile, victims of the fraudsters are continuing to contact *The Evening Telegraph* to voice their frustrations.

Mike Head (29), of Churchfield Court, Walton, had more than £700 taken from his bank account between November 1 and 6. The seven transactions were made at an ATM in Canada.

He contacted his bank immediately.

Mr Head said: "I've started checking my account every day. Chip-and-pin cards need to be made more secure."

Marilyn Lander (52), of Botolph Green, Peterborough, has been the victim of bank fraud twice in the last year.

She said: "My card was cloned and money was used from my account to pay for a holiday and flights. It added up to £850."

Cambridgeshire police is continuing its investigations.

A spokesman said: "This is a complex investigation which is being pursued thoroughly and as a matter of urgency."

By RACHEL DEVLIN

rachel.devlin@peterboroughtoday.co.uk

WHAT'S YOUR VIEW?

Write to: The Evening Telegraph, 57 Priestgate, Peterborough, PE1 1JW

E-MAIL: eteditor@peterboroughtoday.co.uk

TEXT: PETCOM to 84070



Barclaycard

3E61/060210FF02000128

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
PE1 3UH

Barclaycard House
PO Box 5592
Northampton NN4 1ZY

Phone: 0870 154 0154
www.barclaycard.co.uk
10 February 2006

Dear Mr Reddell,

BARCLAYCARD SERVICES
ACCOUNT NUMBER: 4929 4052 4199 4004

The above card has been cancelled following your recent call to our Customer Service department. If you are still in possession of it please destroy it immediately by cutting it up.

For our Fraud department to be able to investigate your claim, we need you to complete the attached disclaimer confirming that neither you nor any authorised users on the account took part in any of the disputed transactions. Please ensure that all the relevant sections of the form have been completed and all cardholders on this account sign this statement of claim.

So that we comply with the rules and time limits laid down by the card schemes we would be grateful if you could return the disclaimer to us, in the enclosed pre-paid envelope, as soon as possible. Please note that if you do not return it to us within 3 weeks we will assume that you now accept all the previously disputed transactions.

Finally, as your card number has now been changed, please contact any companies who charge your account on a regular basis advising them of this change. To help, I have enclosed a form for you to send to them.

Your co-operation in this matter will be very much appreciated.

Yours sincerely,

Judith Morshead (Mrs)

Fraud Prevention

Enclosure: Pre-paid envelope

Our Ref: KBCR3a/al

27th MARCH 2006

Direct Facsimile:



1234 Pavilion Drive Northampton NN4 7SG
Barclaycard Main Reception: 01604 234234

MR D D REDDELL
39 LAVENDER CRESCENT
DOGSTHORPE
PETERBOROUGH
PE1 3UH

Dear Mr Reddell

ACCOUNT NUMBER -4929 4052 4199 4004

I write with reference to the disputed ATM withdrawals made from your account.

Investigation

Having examined Bank records I can confirm that the withdrawals in question are valid and made using the card and PIN issued to you.

The only possible explanation therefore, is that if you did not withdraw the cash, then a third party must have done so, having been able to take, use and replace the card without your knowledge. For this to have been possible the associated PIN would have to be known to whoever used the card.

Decision

The situation is such that as the card and PIN were in your overall control at the time, you are responsible for any usage which occurs. It is therefore inappropriate for a refund to be made and the debits will have to remain on your account for payment in the usual manner.

Yours sincerely,

Mr A Liversage
FRAUD DISPUTES
DEPT KBCR

Phone 12TH APRIL 12.20 PM
MR LIVERSAGE
CAN NOT TRACE OUR LETTER. SAID
IT WAS PROBABLY GONE TO APPEAL. BUT
WAIT FOR REPLY

Our Ref: KBCR/sub.b/PA
30 May 2006

Direct Line:

Direct Facsimile:



1234 Pavilion Drive Northampton NN4 7SG
Barclaycard Main Reception: 01604 234234

MR D D REDDELL
39 LAVENDER CRESCENT
DOGSTHORPE
PETERBOROUGH
PE1 3UH

Dear Mr Reddell

DISPUTED ATM WITHDRAWALS - £2850.00
CARD NUMBER - 4929 4052 4199 4004

I write further to your letter received 25/04/06. Please allow me to explain the Bank's position in more detail.

Firstly, in order to successfully withdraw, cash from an ATM, two items are required; one being the card and the other being the card's accompanying PIN. Each time a card is inserted into the ATM, the details are recorded on the Banks audit trail, which in this case clearly shows that the withdrawals in question were made using the card issued to you. These entries are entirely authentic and could only have been debited to your account as a result of your card being used in the ATM.

Whilst you state that you did not withdraw the cash, the Banks evidence does confirm that your card has been used. Therefore, the only other possible explanation is that 'someone' with the opportunity and ability to take your card, use it and then replace it, withdrew the cash from your account. This would have required knowledge of the PIN. Under the Conditions of Use for your card, by which you agree to abide by when the facility was granted, you are responsible for not only keeping the card safe but also maintaining the secrecy of the PIN.

With regards to your comments concerning pattern of withdrawals, I would advise that whilst checks are made on account activity by Barclaycard, the withdrawals were all PIN verified made with your genuine card.

This is a matter that does need some urgent consideration. We can be certain that the genuine card has been used, therefore if a third party has been taking and replacing the card, they need to be identified before they are able to do the same thing again. For this reason I would ask you to give some consideration as to who could have had access to your card during the times of the withdrawals.

Barclaycard

Direct Line:

Direct Facsimile:

1234 Pavilion Drive Northampton NN4 7SG
Barclaycard Main Reception: 01604 234234

In conclusion, I can tell you that your case has been reviewed and all factors have been taken into consideration. However, as you are responsible for keeping the card safe and the PIN secret at all times and as the card and PIN were in your possession at the time, the Banks position remains unchanged in that it will not be possible for the Bank to refund your account.

Yours sincerely



MISS D HOLLAND
FRAUD DISPUTES
DEPT KBCR

Our Ref: 5A33/060613RK15000847

Fax: 0151 549 7997

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
PE1 3UH

13 June 2006

IMPORTANT - YOU SHOULD READ THIS CAREFULLY

Default Notice served under Section 87(i) of the
Consumer Credit Act 1974

GOLD VISA ACCOUNT NUMBER	: 4929 4083 6844 6006
PRESENT OUTSTANDING BALANCE	: £3,201.53
OVERDUE AMOUNT	: £236.00
CREDIT LIMIT	: £3,000.00

We act as agents for Barclays Bank PLC trading as Barclaycard. Despite a recent letter from Barclaycard, you are still behind with the payments on your account and your balance is still over the agreed credit limit.

Under the terms of your Barclaycard Agreement, you must pay at least the minimum payment by the date shown on your monthly statement. Also, you may only use your card within the agreed credit limit and must pay any balance over this credit limit immediately. You have therefore broken the agreement in both respects.

To correct this, you must make a payment of £236.00 to reach Barclaycard before 27 June 2006. Below are some of the ways you can pay. You can find more ways to pay on the back of your Barclaycard statement:

- . Over the counter of any UK bank. (Barclays Bank is free of charge)
- . By post using the enclosed envelope. Please write your Barclaycard account number on the back of your cheque.

If you are unable to pay, you must call Mercers immediately for help on 0870 410 0385 and cut in two all cards that you and any authorised users still have on this account. We are open Monday to Friday 8am-7pm and 9am-1pm Saturdays.

(Continued)

Continued ...

If the action required by this notice is taken before the date shown on this notice no further enforcement action will be taken in respect of the breach.

If you do not take the action required by this notice before the date shown then further action set out below may be taken against you (or a surety).

- A debt collection agency will send a **Formal Demand** to you. This will ask for repayment of your whole balance. If you do not pay this, they may take further action against you. This may include legal action.
- Details of your account will be registered with **Credit Reference Agencies** if you do not send the payment requested by the date in the Formal Demand.

If you have any difficulty in paying any sum owing under the agreement or taking any other action required by this notice, you can apply to the Court which may make an order allowing you (or any surety) more time.

If you are not sure what to do, you should get help as soon as possible. Free independent advice and assistance for those in financial difficulties is available from the following:

- Citizens Advice Bureau: to find your nearest CAB check your local phone book or look in the Yellow Pages under 'counselling and advice'
- Consumer Credit Counselling Service: call 0800 138 1111
- National Debtline: call 0808 808 4000
- The Federation of Information and Advice centres: at www.fiac.org.uk or call 0207 489 1800
- Trading Standards Office: find them in the phone book

Some companies may charge you for debt management assistance which will mean that you will be repaying your debt over a longer period. Always ask if there is a charge and check the small print of the agreement. The above named organisations provide their debt assistance services for free.

our ref **6360471/CW/CCCH**
your ref



Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
PE1 3UH

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

phone 0845 080 1800
fax 020 7964 1001
dx 141280 Isle of Dogs 3

website www.financial-ombudsman.org.uk

23 June 2006

Dear Mr Reddell

Your complaint about Barclays Bank Plc

Thank you for sending us your completed complaint form.

I enclose a leaflet which explains how we can help to resolve complaints. As you will see, before we can look into a complaint you must first have given the firm concerned a chance to put things right.

I have therefore sent Barclays details of your complaint and have asked them to deal with the matter. They should respond to the complaint in writing within 8 weeks of the date they hear from us.

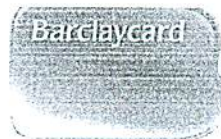
For your information Barclays's address is:

Barclays Bank Plc
Head Office Customer Relations
Level 10
1 Churchill Place
London
E14 5HP

On receipt of Barclays's final response, if you feel that they have not put things right, or alternatively you have not heard from them after 8 weeks, please return the complaint form together with any other supporting documentation.

Please note that the final decision letter must state that it is a final decision made on behalf of senior management, and give you six months from the date of the letter to approach the Financial Ombudsman Service.

I return any papers you may have sent us as they may be of help when you are dealing with Barclays.



Mr Donald Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
PE1 3UH

Barclaycard
PO Box 599
Manchester
M60 3NF

Tel: 0161 200 7476
Fax: 0161 200 7197
Minicom: 0161 200 7447

28 June 2006
Reference: 1001H1X3

Open: Mon-Fri 8.00am-6.00pm

Dear Mr Reddell

I refer to a recent communication from the Financial Ombudsman, regarding your dissatisfaction with the service received from Barclaycard. I would also like to thank you for taking the time and trouble to bring this to our attention.

I am writing to inform you that the issues you have raised have now been escalated to this department, and it is our aim to resolve this matter by the 21st July 2006. You will therefore be hearing from either myself, or a fellow manager shortly.

Should you have any immediate concerns or queries, please do not hesitate to contact me on the telephone number above.

Yours sincerely

Katrina Downs
Customer Relationship Manager



Direct Line: 01604 253320 (Monday - Friday 9am - 5pm)
Direct Facsimile: 01604 254189

1234 Pavilion Drive Northampton NN4 7SG
Barclaycard Main Reception: 01604 234234

If you have a hearing or speech impairment
please call our Minicom on 01604 256168

Mr D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
PE1 3UH

Our Ref : 1001H1X3
19 July 2006

Dear Mr Reddell

FINAL RESPONSE

I write further to your recent contact with Katherine Tuft, regarding disputed transactions on your Barclaycard account.

It is my understanding that you wish us to change the decision made by our Fraud department, to hold you responsible for the cash withdrawals made in January 2006, totalling £2,850.

It is your position that these withdrawals were not made by you. However, as the card was in your possession at this time, and the PIN was not known to any third party, I am upholding our decision to hold you liable for these transactions.

In the light of the above it is perhaps helpful if I point out that it is not the duty of the bank to identify the person undertaking the disputed transactions. Instead, it is merely our responsibility to determine where the liability should rest in the case, based on our understanding of how the transactions could have been undertaken.

As you could provide no explanation as to how the person responsible could have got hold of your security information then I'm afraid it would be unsafe for me to rule out the possibility that the disputed transactions may have been made with your knowledge or consent. This being the case then I regret I am not able to support your claim for reimbursement and as such the bank will continue to hold you liable for the amount of the disputed transactions.

As we are not prepared to refund the monies paid for these transactions for the purposes of the Financial Ombudsman Service you may regard this letter as the Bank's "Final Response". I enclose a copy of the Financial Ombudsman Service's "Explanatory Leaflet". Please note you have six months from the date of this letter to refer this matter to them, should you wish to.

Yours sincerely

A handwritten signature in black ink, appearing to read "C. Rushton". The signature is written in a cursive style with a large initial "C".

Christine Rushton
Assistant to Director

Enc: Financial Ombudsman Service – "Explanatory Leaflet".



**Financial
Ombudsman
Service**

ref 6360471/GWB
our ref

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

dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
Cambs
PE1 3UH

7 August 2006

Dear Mr Reddell

Your complaint about Barclays Bank Plc

Thank you for contacting us.

I am now passing your complaint to our casework area for further consideration. The attached information explains in more detail what will happen next.

One of my colleagues will write to you as soon as possible to keep you informed of how your complaint is progressing. In the meantime if you have any further information which might help us, please send it to us quoting our reference number above.

Please note that when the services of a solicitor, accountant or other paid adviser are used to bring a complaint to us, we do not normally award professional fees, in full or in part.

Yours sincerely

Christopher Wheatley
Consumer Consultant

direct line 020 7964 1148
direct fax 020 7964 1149
email christopher.wheatley@financial-ombudsman.org.uk



**Financial
Ombudsman
Service**

ref 6360471/10
ur ref

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

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
Cambs
PE1 3UH

dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

6 September 2006

Dear Mr Reddell

Your complaint about Barclays Bank Plc

The large volume of cases we are dealing with at present has meant that we have not yet been able to allocate your complaint to one of our adjudicators so that it can be assessed. However, we will do this as soon as possible and we will contact you again within the next four weeks to keep you updated on the progress of your complaint.

If you need to contact us, please remember to quote our reference, 6360471/10.

Yours sincerely

Sunil Patel
Team Administrator

direct line 020 7093 7166
direct fax 020 7093 7167
email sunil.patel@financial-ombudsman.org.uk



**Financial
Ombudsman
Service**

ref 6360471/10
our ref

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
Cambs
PE1 3UH

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

dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

4 October 2006

Dear Mr Reddell

Your complaint about Barclays Bank Plc

I am sorry to tell you that, unfortunately, we are still not in a position to look at your complaint. We hope to allocate it to one of our adjudicators for assessment as soon as we can. We will contact you again within the next four weeks to update you on our progress.

I do apologise for any inconvenience. If you need to contact us in the meantime, please remember to quote our reference 6360471/10.

Yours sincerely

Kerri-Ann Woolward
Team Administrator

direct line 02079640332
direct fax 02079640333
email kerri-ann.woolward@financial-ombudsman.org.uk



**Financial
Ombudsman
Service**

ref 6360471/SJ/10
ur ref

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
Cams
PE1 3UH

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

dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

11 October 2006

Dear Mr Reddell

Your complaint about Barclays Bank Plc

Your complaint has now been passed to me. My role includes seeing if the complaint can be satisfactorily resolved by mediating between you and Barclays.

Our reference has now changed slightly. Please quote the new reference from now on, to ensure that future correspondence gets straight to me without delay.

I have written to the Firm to request some additional information and would be grateful if you could also complete and return the attached questionnaire.

I look forward to receiving your response as soon as possible and in any event no later than 26 October 2006.

Yours sincerely

Sarita Joshi
Adjudicator

direct line 020 7964 1492
direct fax 020 7964 1493
email sarita.joshi@financial-ombudsman.org.uk

our ref 6360471/ST/10
our ref



please write to **Financial Ombudsman Service**
South Quay Plaza
183 Marsh Wall
London
E14 9SR
dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
Cambs
PE1 3UH

26 October 2006

Dear Mr Reddell

Your complaint about Barclays Bank Plc

I do not appear to have received your response to my letter dated 11 October 2006.

If you have not already done so, please reply as soon as you can and, in any event, no later than 9 November 2006.

Yours sincerely

Sarita Taylor
Adjudicator

direct line 020 7964 1492
direct fax 020 7964 1493
email sarita.taylor@financial-ombudsman.org.uk

Handwritten: 30.10.06 10.15 AM

Handwritten: POSTED 30.10.06



**Financial
Ombudsman
Service**

ref 6360471/ST/10

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
Cambs
PE1 3UH

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

dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

31 October 2006

Dear Mr Reddell

Your complaint about Barclays Bank Plc

Thank you for your letter of 29th October 2006. This is a standard letter produced just to confirm that it has reached us safely and will be passed to the adjudicator dealing with the complaint.

Yours sincerely

S. Underwood

Business Support Team

direct line 020 7964 1492
direct fax 020 7964 1493
email sarita.taylor@financial-ombudsman.org.uk



**Financial
Ombudsman
Service**

ref 6360471/ST/10
jur ref

Mr D D Reddell
39 Lavender Crescent
Dogsthorpe
Peterborough
Cambs
PE1 3UH

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

dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

2 November 2006

Dear Mr Reddell

Your complaint about Barclays Bank Plc (the Firm)

I refer to our letter of 31 October 2006 and I am writing to set out my assessment of your complaint. In reaching my assessment I have considered all the evidence produced by you and the Firm. Thank you for your patience.

Before detailing my assessment I feel it would be appropriate to outline the role of the Financial Ombudsman Service. We are a body that acts to resolve individual disputes between consumers and financial firms where consumers feel they have lost out as a result of the firm's actions (or inaction). We have the power to award monetary compensation to make good actual financial loss and significant distress and/or inconvenience that is caused to a consumer by an error on the part of the firm. But we do not supervise, regulate or discipline the firms we cover and we have no authority to impose punitive damages or to require a firm to alter its systems.

Complaint

You dispute liability for withdrawals made at cash machines.

In order to put matters right, you would like the Firm to refund the value of these transactions together with interest.

Circumstances

In summary, I understand you received a replacement credit card from the Firm in mid-December 2005 as your existing card was due to expire. Around this time you were also issued with a Personal Identification Number (PIN). You say you placed both items in a wall safe under lock.

You have told us that both the card and PIN remained in the safe and the only time these items were removed was to activate the card at the beginning of January 2006; you took the card to the Fletton Branch. After activating the card you advise the card was then placed back in the safe and the PIN notification memorised and destroyed. You say no one else could have taken the card from the safe and the key for it is kept in a secure place.

Between 10 and 18 January 2006 a number of withdrawals were made at cash machines in the Peterborough area totalling £2,850.00. In addition to this, cash advance fees and interest was levied to the account. The transactions were as follows:

Date	Amount	Location
10 January 2006	£200.00	NatWest Morrisons, Peterborough
11 January 2006	£200.00	NatWest Morrisons, Peterborough
12 January 2006	£200.00	NatWest Morrisons, Peterborough
13 January 2006	£250.00	Abbey National Plc, Peterborough
14 January 2006	£400.00	Abbey National Plc, Peterborough
15 January 2006	£400.00	Abbey National, Peterborough
16 January 2006	£400.00	Abbey National, Peterborough
17 January 2006	£400.00	Abbey National, Peterborough
18 January 2006	£400.00	Abbey National, Peterborough

Upon receipt of your account statement in February 2006, you informed the Firm that you did not make the transactions and do not use the card to undertake withdrawals from a cash machine. You have also expressed concerns that you are unable to repay the amount owing.

The Firm has reviewed your claim and declined your request for reimbursement as it has concluded that whoever made the withdrawals must have had access to the card as its systems identified it. The PIN was also input correctly to authorise the withdrawals. You have confirmed the card remained in your possession and the PIN memorised. This being the case, the Firm has concluded that the withdrawals must have been undertaken by you or with your authorisation.

As the Firm continues to hold you liable for the transactions you have referred the matter to the Financial Ombudsman Service so that we may undertake an independent review.

Findings

In cases such as this where there is a dispute about what has happened, I assess the merits of the complaint on the basis of a balance of probabilities – that is to say what is most likely to have happened in the light of the evidence and given the circumstances. So, in order to uphold your complaint, I must be sufficiently persuaded that your version of events is *more likely* than the Firm's (not simply just as likely). I have also had regard for what I believe to be fair and reasonable together with what I see as good banking practice.

In order to find for the Firm, I must also be satisfied that the transactions in question have been authorised by the cardholder or that the cardholder has colluded with a third party in the making of the disputed transactions.

Having examined and obtained the relevant audit trails from the Firm, I make the following findings:

- I am satisfied the card used to make the withdrawals was issued to – and received by – you; this is evidenced by fact that the Firm's records show the card was Chip impregnated and read. I note you have expressed concerns that an opportunist thief may have cloned your card and compromised the PIN when you took it to the Fletton branch. However, I would like to explain that when a customer undertakes a transaction using a Chip and PIN card the cash machine or other terminal searches the Chip for the PIN, which is in encoded form. If the PIN is correct the transaction

is authorised. When the Chip is read in this way a permanent record is made. There is no indication that the PIN is stored on the card in any readily recognisable or unencrypted format that the thief could have easily extracted.

- It is also clear that the thief was able to correctly enter the PIN to make the withdrawals. Given that you have confirmed that the card and PIN remained on your possession secure in a safe and the PIN memorised and destroyed, the only logical conclusion I can come to is that I cannot safely exclude the possibility that the transactions were authorised by you or collusion has taken place here. There is simply no persuasive evidence that apart from you a third party had access to the card and PIN from the circumstances described.

Conclusion

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

Although I appreciate that this is likely to come as a disappointment to you, I nevertheless hope that my explanation is helpful. However, if you have any new points that you consider we should take into account and which you believe would make a significant difference to the outcome of your complaint, please let me have them by 16 November 2006. If you are unable to do so fully by then, please let me know now.

If I do not hear from you by 16 November 2006 I will assume that you do not wish to take the matter further with us, and I will let the firm know. In closing, I would add that any rights you may have to take legal action against Barclays Bank have not been affected by our consideration of your complaint.

Yours sincerely



Mrs Sarita Taylor
Adjudicator

direct line 020 7964 1492
direct fax 020 7964 1493
email sarita.taylor@financial-ombudsman.org.uk

Appendix C

FOS decision – Lydia Truong

Write back to John Wilson
re Banking Code rights



Financial
Ombudsman
Service

our ref 6663181/JW/37
your ref

Ms L Truong
53 Brooke Road
London
E17 9HH

① proof
if chip ready
has been
copied.

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

dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

10 April 2007

Dear Ms Truong

Your complaint about Barclays Bank Plc

I am writing to set out my assessment of your complaint. In reaching my assessment I have considered all the evidence produced by you and the bank.

You dispute liability for nineteen cash machine withdrawals made using your debit card on your company account Heckland Financial Consultants Limited. You have told us that you did not authorise or carry out the transactions.

Circumstances

You hold a business account number 93096130 and have a Connect debit card number 4539.....3006. In June 2006 you discovered the following cash withdrawals on your account which you did not recognise:

Date	Time	Location	Amount
16 May 2006	22.58	Walthamstow	£500
18 May 2006	22.17	Forest Road	£500
19 May 2006	21.43	Forest Road	£500
20 May 2006	21.43	Wood Street	£500
22 May 2006	20.10	Wood Street	£500
24 May 2006	20.18	Lea Bridge	£500
25 May 2006	18.46	Leytonstone	£500
26 May 2006	22.20	Walthamstow	£500
28 May 2006	22.52	Wood Street	£500
09 June 2006	18.36	Lea Bridge Road	£500
10 June 2006	18.52	Lea Bridge Road	£500
11 June 2006	20.47	Walthamstow	£500
12 June 2006	22.05	Lea Bridge Road	£500
16 June 2006	20.48	Lea Bridge Road	£500
17 June 2006	19.26	Lea Bridge Road	£500
18 June 2006	22.09	Lea Bridge Road	£500
23 June 2006	20.10	Lea Bridge Road	£500
25 June 2006	21.30	Lea Bridge Road	£500
26 June 2006	21.38	Lea Bridge Road	£500

purchase &
phone bill - location

2 places @ same
time.

K322c

You reported these withdrawals to the bank and asked for a refund. You explained that your card was always in your possession and had never gone missing. You also told the bank that you did not keep a written record of your PIN (Personal Identification Number) and had not given it to anyone .

After an investigation, Barclays Bank told you that it was satisfied that all of the transactions had been made with your genuine card and PIN so would not be making a refund to you. You were unhappy with this decision and have complained to this Service.

You say that:

- Your card was normally kept in your wallet in your workbag which was kept in your room when you were at home. Even if your housemates had been able to take your card they would not have known the PIN. You always destroy the PIN advice after memorising the number.
- The transactions were all carried out in the evenings but, since you didn't finish work until after 5.30pm and would not usually arrive home until 7pm at the earliest, you could not have carried them out.
- You would like an apology from the bank and for it to pay you compensation. You would also like a review of the bank's fraud process.

The bank says that:

- All of the disputed withdrawals were carried out at cash machines within a short distance of your home address.
- It was your genuine card which had been used to carry out the transactions, rather than a clone of that card. And the correct PIN had been inputted correctly for every transaction.

Findings

By bringing a complaint to the Financial Ombudsman Service, you are asking us to express an opinion on the merits of your case. In doing so, we consider all the information and documentation provided by both you and the bank and tell you what we find to be fair and reasonable in all the circumstances of each individual case.

does this not extend to further investigation only existing evidence

Because there is inadequate clear, conclusive evidence one way or the other I have to reach my decision on a complaint such as this on the balance of probabilities, that is to say what I consider is most likely to have happened in the light of the available evidence and the surrounding circumstances. I can only fairly find in favour of a complainant in a case such as this if I am satisfied that he or she neither carried out or authorised the disputed transactions, nor colluded with another person to enable the transactions to be carried out.

The bank has confirmed that your card was a Chip and PIN card. This means that on each occasion your card was used, the cash machines read the Chip, which was confirmed by the Firm's audit trails. As this Service has not seen any persuasive evidence so far that a Chip can be copied to produce a duplicate card, I cannot see sufficient grounds to uphold your complaint by reasoning that a fraudster made use of a duplicate card.

Alouse that I used the card and card cannot be copied

X
Furthermore, the bank has provided me with copies of its audit trails for each of the disputed withdrawals, to which I have given careful consideration. These confirm that your card was used to make the withdrawals on each of the occasions in question, in conjunction with the correct PIN. The firm's audit trails show that the PIN was entered correctly at the first attempt each time a withdrawal was made and it does not appear that the PIN had recently been re-issued, such that it might have been intercepted before reaching you. This means that the individual who made the withdrawals must have had knowledge of your PIN – even though you have said both that you memorised it and did not keep a written record of it.

→ Z
You have said that your card was in your possession at all times. However, in light of the foregoing, I can only conclude that the card must not have been with you all the time. I accept that you did not make the withdrawals yourself. But the fact that your PIN was entered correctly at the first attempt, in conjunction with the card, leads me to conclude that the PIN must have been known to a third party. This would be in contravention of the card terms and conditions which state, under section 5.1 that *You must do all that you reasonably can to keep the card safe and your personal identification number (PIN) secret at all times*.

And, in any event, since you say that you always had your card with you, it means that whoever made the disputed withdrawals did so with your permission. If you are not correct, it means that someone was able to remove the card, use it to make the withdrawals and return it without you noticing. Since I am satisfied by the evidence produced by the bank that it was your genuine card which was used to make all of the withdrawals, I regret that I am not persuaded that someone in possession of your PIN was able to remove your card, use it and return it without you noticing on nineteen separate occasions.

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 that I cannot find in your favour. I do not need, for the purpose of reaching my conclusions, to determine who actually made each of the withdrawals.

Conclusions

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

Although I appreciate that this is likely to come as a disappointment to you, I nevertheless hope that my explanation is helpful. However, if you have any new points that you consider we should take into account and which you believe would make a significant difference to the outcome of your complaint, please let me have them by 24 April 2007. If you are unable to do so fully by then, please let me know now.

- 15th May 2007

If I do not hear from you by 24 April 2007 I will assume that you do not wish to take the matter further with us, and I will let the business know. In closing, I would add that any rights you may have to take legal action against Barclays have not been affected by our consideration of your complaint.

Yours sincerely



John Wilson
Adjudicator

direct line 020 7964 1362

direct fax 020 7964 1363

email john.wilson@financial-ombudsman.org.uk