

## **summary of complaint**

Mr A complains that he is being held liable for transactions on his account that he states he is not responsible for. The disputed transactions consist of both cash withdrawals and also a number of retail transactions. So far one transaction has been refunded to Mr A due to the retailer being unable to produce a merchant's receipt to Barclays Bank Plc.

## **background to complaint**

The adjudicator recommended that the complaint should not be upheld. She considered that, taking all the facts and circumstances into account, she could not safely conclude that Mr A had not made or authorised the disputed transactions.

I have previously issued a provisional decision in which I explained that I was minded to uphold this complaint.

Upon considering my provisional decision, Barclays have now agreed to accept this view.

## **my findings**

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. All the evidence has been considered on the balance of probabilities – in other words, what I consider is more likely than not to have happened in light of the available evidence.

Mr A has used the same Personal Identification Number (PIN) for his debit card for a considerable number of years. He has also confirmed that he memorised the PIN for his card and did not have these details written down anywhere. I am satisfied, on the balance of the evidence presented, that Mr A is unlikely to have needed to write down his PIN.

I have considered the timeframe between the last transaction which Mr A confirms making to the first disputed cash withdrawal several hours later. This is a relatively short period of time. I note Barclays have ruled out the possibility of 'shoulder surfing'. However I am of the opinion that, on the balance of probabilities, this is likely to have happened. It is entirely plausible that a third party may simply have needed to wait a few hours before gaining access to the debit card from Mr A's wallet.

I am of the opinion that it is reasonable to conclude that a third party may well have removed Mr A's wallet, taken the debit card out and then replaced the wallet back in Mr A's belongings. This may have been done so as to delay the likelihood of Mr A noticing that his debit card had been taken in the first place. Once a third party had access to Mr A's debit card, it would have only taken an extra few seconds to replace the wallet.

I have also given consideration to the pattern of the disputed transactions. Our adjudicator's position was that the timeframe of several hours, where no transactions were carried out early in the morning, is not usually indicative behaviour of an unauthorised third party using a debit card. Whilst I note these comments I feel it is important to remember that there is no set pattern ever adopted when an unauthorised party uses a stolen debit card.

I have to decide what is more likely than not to have happened, on the balance of all the circumstances of this complaint. Based on the evidence that is available, I am inclined to decide that I cannot fairly and reasonably say that Mr A either carried out or authorised the

disputed transactions. In light of this I do not believe it is reasonable for Barclays to hold Mr A liable for the disputed transactions.

**my decision**

For the reasons set out above, my decision is that I uphold this complaint against Barclays Bank Plc and propose to award a full refund of all the disputed transactions to Mr A, along with statutory interest at a rate of 8% per annum on the amounts refunded from 17 April 2011 to the date of payment.

Robyn McNamee  
**ombudsman**