

The complaint

Mr V complains Barclays Bank UK PLC ("Barclays") unfairly registered a fraud marker against him.

What happened

In May 2022, Barclays restricted Mr V's account and asked him for source of funds information relating to a payment of £1,000 that he'd received into his account. Mr V called Barclays and said the payment was in relation to the sale of shoes he had arranged through a social media platform and conducted in person with the buyer.

Following its review, Barclays sent a letter on 23 May 2022 saying it had decided to close his account with immediate effect. Barclays registered a CIFAS (Credit Industry Fraud Avoidance System) 'misuse of facility' marker against him. Some time later, Mr V was unable to open a new bank account. So he complained to Barclays.

Barclays didn't uphold Mr V's complaint about the fraud marker. In its response of February 2023, it made the following key points:

- In line with banking regulations, Barclays has an obligation to report incidences such as this on the Credit Industry Fraud Avoidance System (CIFAS)
- Barclays reviewed further information Mr V provided. But it can't remove the information its registered
- Banks are not allowed to decline an application based solely on the information Barclays have provided. So Mr V should contact the banks who have declined his application to seek further clarity on why it made that decision

Mr V referred his complaint to this service.

Mr V says that in April 2022, after meeting some people at a party in a mansion, he stayed with them and later as he was invited, he lived with them at their home. Mr V says he was going through a difficult time personally and needed somewhere to live. Mr V says he befriended these three individuals who were a lot older than him.

Mr V says he later learnt he was the only person living at the property with a bank account. Because of this he was asked by these individuals to accept money into his Barclays account on their behalf. Mr V said he felt obligated to do so because they were letting him live at their property free of charge.

He adds that he did feel sceptical as he had been the victim of fraud previously a few years before. But he was reassured that the funds were legitimate as they were coming from a business account to purchase building materials. Mr V says the individuals wanted the money in cash and he should've seen this as a 'red flag' at the time. He says he sometimes withdrew the money from ATMs, and at times transferred the funds sent to him into another of his accounts before sending to external accounts. All of this was done in line with the

individuals' instructions.

Mr V says around £7,000 was deposited into his account in this way. But later, without forewarning and his consent, a £1,000 payment from a private individual was paid into his account. He says he was told by this group of individuals to lie to Barclays after it had blocked his account, and say the funds were from the sale of shoes. Mr V says he felt pressured and somewhat scared as the individuals were older than him and had spoken about being involved in gang like criminal activities.

Mr V has explained that the fraud marker has had a significant and detrimental impact on his life. As he's unable to open another account for his salary to be paid into. He says this has had acute negative impact on his mental health too.

Mr V also explained the individuals he lived with appear to have also stolen his personal identification documents to hire cars for which he is now being chased for significant payments for fines they'd incurred.

Mr V says he's unable to deposit a cheque from HMRC for his tax refund as he doesn't have an account. He's also missed several payments for his credit card adversely impacting his credit file. Mr V says he's relatively young and finds it untenable to be in this position.

One of our Investigator's looked into Mr V's complaint. They spoke and corresponded with Mr V several times. In short, Mr V added:

- He lived at the home of the individuals from around March 2022 until September/October 2022. Mr V never asked them why they didn't have bank accounts of their own
- He couldn't remember some of the payments he'd made at the time as it was a long time ago
- He was first asked to receive a payment for one of the individual's girlfriends. And as they now knew his bank details, they started transferring money into his account without his consent or knowledge
- He was paid between £50 to £100 by the group of individuals when he withdrew the funds as a 'thank you'
- The individuals weren't 'good citizens' as they had spoken about illegitimate activities they'd been involved in the past - and were known gang members. Because of this he was scared to report them or do anything about it
- Mr V was at the mansion party for around eight days in April 2022 where he met the group of three individuals. And that it was in April 2022 when the girlfriend of one of the individuals sent him money

After considering information from both Mr V and Barclays, our Investigator recommended this complaint isn't upheld. In summary, they found:

- Barclays complied with its obligations when applying the CIFAS marker
- They don't doubt Mr V felt pressured into aiding the individuals he was living with at the time. But they can't conclude he was unwitting in the activity on his account. Mr V fabricated a story about some of the transactions, and wasn't therefore honest with Barclays when it questioned him

- And they thought, at the very least, Mr V would have had some idea as to what was going on and what he was involved in

Mr V didn't agree. He emphasised he wasn't witting, and that he was under extreme pressure as the individuals had also taken his driving licence. He says he's now built up his confidence to be honest about what happened. He adds that one of the individuals had also threatened his life for an unrelated issue previously and he has since discovered that various identity frauds have been committed against him.

Our Investigator empathised with Mr V's circumstances but reiterated that they think he had some inkling of what was happening wasn't right.

As Mr V didn't agree, this complaint has now been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've decided not to uphold this complaint. I know Mr V feels strongly about this matter, and I don't undervalue the impact of what he says this has had on him. So I'll explain why.

The marker Barclays filed with CIFAS is intended to record there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds.

In order to file such a marker, Barclays is not required to prove beyond reasonable doubt Mr V is guilty of a fraud or financial crime, but they must show there are grounds for more than mere suspicion or concern. CIFAS says:

- “There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]
- The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police”

What this means in practice is that a bank must first be able to show fraudulent funds have entered Mr V's account, whether they are retained or pass through the account. Having looked at the information Barclays have given me; I'm satisfied fraudulent funds entered Mr V's account.

Secondly, Barclays will need to have strong evidence to show the consumer was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment.

A marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to consider whether Barclays has enough evidence to meet the standard of proof and load a marker for a misuse of facility with CIFAS.

Mr V has explained that he made up a false story when Barclays restricted his account and asked him about a payment. In that he was selling shoes to someone he met through a social media platform. He says he did this because he was told to by the individuals he was living with. He says they were orchestrating the transfer of funds into and out of his account after he'd met them at a party in 2022.

Mr V's also said he should have seen this as a 'red flag' given he'd been the victim of similar fraud some five or six years before. Mr V says he was paid between £50 and £100 as a thank you for helping these individuals when withdrawing funds for them.

Mr V had been living with these group of individuals for around seven or eight months, and he has said he knew they had a background of being involved in illegal activities.

Taking this all into account, I'm persuaded Mr V was more likely to have been witting and knew the funds were likely the proceeds of fraud. I'd add that given his previous experience of having his account used in this way, and given he likely had more than ample opportunity to do something about alerting Barclays or the police of what was happening, I'm persuaded he chose to be complicit.

Mr V is effectively saying he was used as a 'money mule'. What that means is that he let others use his account for fraud. I've noted what Mr V has said about his young age, and whether this should've been considered by Barclays before it registered the fraud marker. I've also carefully considered what he's said about being pressured by these individuals and being fearful of them.

Having done so and having listened to the calls between Mr V and Barclays and this service, I'm not satisfied his age and potential vulnerability is likely a factor here. I say that because Mr V understood how his bank account works and what letting others use it in this way could result in. So I think he understood well what the consequences of this could be and knew that it was most probably being used for illegitimate purposes.

I also add that having listened to the call in which he set-out the fabricated story of selling shoes, he appears calm and there doesn't seem to be anyone telling him what to say in the background. The fact he has been inconsistent, and somewhat evasive, leads me to the conclusion that he was deliberately concealing something he knew was improper or illicit.

So, after weighing all of this up, I'm satisfied Barclays applied the marker fairly. That means I won't be asking Barclays to remove the marker. Mr V hasn't complained about the account being restricted or closed, so this isn't something I've considered here.

My final decision

For the reasons above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 5 January 2024.

Ketan Nagla
Ombudsman