

The complaint

Mr M complains that Barclays Bank UK PLC (Barclays) is holding him liable for transactions which he says he didn't authorise – and has recorded a marker against him with the fraud prevention agency 'CIFAS'.

What happened

Mr M held a current account with Barclays. Around November 2020, Barclays was notified that he had been the beneficiary of a fraudulent credit, so placed his account under review.

Barclays returned the funds which remained in the account from that credit (some had been spent) and removed the block. It says it has no records of discussing the review with Mr M at the time. But he says it did speak to him – and he was able to explain the expenditure.

In September 2021, Barclays placed Mr M's account under review again following another report of a fraudulent credit. It ultimately returned the remaining funds and then closed his account. It also recorded a marker against him on CIFAS, saying he misused his banking facilities.

Mr M says he has found it difficult to get another account due to this marker. He also says he checked his account following the review and account closure, and identified a number of payments and credits on between November 2020 and September 2021 which he didn't authorise or know about.

After complaining to Barclays about the disputed transactions and CIFAS marker, and being unhappy with its response, Mr M referred the matter to our service. Our investigator didn't recommend Barclays should remove the marker or refund him for the payments he was disputing. She didn't think he could adequately account for how and why the credits had been paid into the account, or how the outward payments could have been made without his authority.

Mr M has appealed the investigator's findings. He maintains he didn't make the payments. He has provided records showing some of his personal information has been compromised online. The investigator has explained she doesn't think the data breach accounts for how an unauthorised person could have made these payments. As no agreement has been reached, the complaint has 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 it. I'll explain why.

CIFAS has set principles for reporting a marker with them. The key consideration here is whether Barclays had reasonable grounds to believe Mr M had been in complicit in (actual or attempted) fraud or financial crime. That must be based on clear, relevant, and rigorous evidence such that the bank could confidently report the conduct of the subject to the police. A mere suspicion or concern wouldn't be enough.

I would also expect Barclays to give Mr M an opportunity to explain the account activity which led it to report a marker. As our investigator explained, it's not particularly clear whether it did so here. But as Mr M is now aware of the account activity, and has had a chance to comment on this, I have considered whether the marker meets the expected criteria in light of his explanation.

If Mr M has been dishonest in reporting a fraud claim, that would be sufficient grounds for Barclays to report a marker against him. The form he submitted reports a number of credits and payments which he says he didn't make and didn't have any involvement with. That includes the two credits received into his account, around ten months apart, which the senders reported were scam payments. Plus two other credits received, and a mix of card payments and bank transfers taken from the account.

It strikes me as unusual that, if a fraudster had the extensive access to Mr M's banking facilities needed to account for this disputed activity, they would have used his account in this way. It would mean they allowed him to largely use his account as normal, and only took payments occasionally – leaving weeks, and sometimes months, in between.

There were also large gaps between the credits received. Mr M hasn't been able to account for how, or why, fraudulent funds were paid into his account. On several occasions, the funds he is disputing that were paid in weren't moved on quickly; some were seemingly used for general spending over time. Which doesn't fit what you would expect to see if fraudulent funds were being paid in, then moved on, by an unauthorised person.

More widely, it also appears odd to me that Mr M didn't check his Barclays account until it was closed – which is why he says he wasn't aware of the credits and payments sooner. And I'd say this arguably seems stranger following his account being frozen and put under review. I'd point out that some of the payments Mr M has disputed predate the first review. In light of that, I question why he wasn't aware of them and didn't dispute them at that time, given he knew the bank had concerns about his account activity – and says he discussed this with it at the time.

A lot of the payments made during the relevant period were card payments and scheduled payments (such as standing orders and direct debits), meaning Mr M wouldn't automatically have seen the account activity when making them. But there were also some undisputed bank transfers and ATM withdrawals made from the account during that time. Some undisputed credits were also received – including what appears to be Mr M's monthly salary. Given the account use, it strikes me as unlikely that Mr M wouldn't have been checking his account activity at all for such an extended period.

In the circumstances, I don't find Mr M's explanation of why he didn't dispute the payments until after his account was closed to be plausible. Particularly when considering how the payments were made.

Barclays' mobile banking records show the disputed bank transfers were made from devices, and from the same IP addresses, used to make other payments which Mr M *hasn't* disputed. That includes payments which appear to have been made to himself, as the payee name is his own. As well as a transfer made very shortly after the fraudulent credit received in September 2021. Yet he says he wasn't aware of the credit until several weeks later, when his account was closed.

Mr M says he didn't share any of his login details, or his device, with anyone. So I can't see how someone else could have made these payments without his knowledge or authority. Furthermore, in order to make all the payments Mr M has disputed, a third party would additionally have needed access to his card details – which he also disputes sharing.

As the investigator has said, it appears the card payments may have been made via Mr M's PayPal account. And it's possible the card details were saved to that account. But if so, that raises the further question of how someone would have been able to access his PayPal account in addition to his Barclays account. I'm not persuaded we've received a reasonable explanation for this.

The investigator asked Mr M for evidence of what happened on his PayPal account, including the messages he says they sent him regarding the payment disputes. Mr M provided records of two transactions, but said he wasn't able to retrieve the messages as his PayPal account is now closed. But I don't consider the investigator's request unreasonable, and I've not seen anything to demonstrate any follow-up contact with PayPal. So I don't have the evidence I would reasonably expect from Mr M to support his explanation that his PayPal account was breached.

Mr M says a website he used was reported to have suffered a data exposure in 2017 – and has suggested this might be linked to the payments he is disputing. But the information he has provided about this lists the exposed data as his email address, his username for a social media platform, and his gender. Those details wouldn't be enough to enable an unauthorised person to access Mr M's banking facilities in this way. And it doesn't seem particularly likely that data potentially exposed in 2017 is connected to attempted fraud against Mr M so many years later, with no other issues in the interim.

When the facts are unclear or in dispute, I must make my decision based on what I think is more likely than not to have happened. One factor I need to consider is the credibility and persuasiveness of Mr M's explanation of what happened when weighed against the other evidence I have seen.

Weighing everything up, it seems implausible to me that the account activity Mr M is disputing was, as he has claimed, completed by a third party without his knowledge or involvement. I've not received a satisfactory explanation for how an unauthorised person would have been able to make these payments over such a long period of time. While fraud doesn't always fit a set pattern, it would be incredibly unusual for someone with such wide-reaching access to Mr M's banking facilities to use his account in this way, over such a long period of time – thereby increasing the risk of detection. I therefore think Barclays has sufficient grounds to hold Mr M liable for the outstanding loss stemming from the disputed payments.

For largely the same reasons, I also think Barclays has reasonable grounds to conclude Mr M was complicit in the disputed account activity. In light of the information it has provided about the payments, I don't think it adds up that Mr M has given us a complete and honest explanation of what has happened. On the evidence provided, I think Barclays would have enough to confidently report its concerns to the police – as is the expectation for applying a CIFAS marker.

I appreciate the impact the CIFAS marker has had on Mr M. But having reviewed all the evidence, I don't consider it unfair or unreasonable that has Barclays reported it.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 December 2023.

Rachel Loughlin
Ombudsman