

The complaint

Mr F complains that Barclays Bank UK PLC registered a marker about him at CIFAS, the national fraud database when it closed his account.

What happened

Mr F says he had no involvement in any fraudulent activity on his account and no control over what happened. He says the marker has led to the closure of another bank account of his at a different financial business.

Barclays said it hadn't made a mistake and that it wouldn't be removing the marker. It had asked Mr F about credits received to his account that had been reported as fraudulently obtained. It had closed his account in line with its terms and conditions.

Our adjudicator didn't recommend that the complaint be upheld. Mr F had first told him that he was the victim of fraud. And that someone must have taken a picture of his debit card. But he couldn't explain how someone would have obtained his PIN. After our adjudicator had issued his first opinion, Mr F changed his version of events and said that he was approached by someone at University about opening an account. And told that if he allowed someone to use it to make transfers he could make money. He said he was worried about the consequences of admitting this. Our adjudicator thought Mr F ought to have been suspicious about this and why he needed to be involved, especially when he was asked to provide his debit card and PIN. He said he'd been offered £500 to £750 for this. And he didn't give this account of what happened when he spoke to Barclays or first contacted this service.

Mr F didn't agree and wanted his complaint to be reviewed.

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.

I need to consider whether the report to CIFAS was made fairly. On this point, Barclays needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted. The evidence must be clear, relevant and rigorous.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I've taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mr F was deliberately complicit in what happened include whether he knew or ought to have known that the money wasn't legitimate, whether he may have benefitted from the money by keeping part and whether he has provided generic or inconsistent explanations.

I agree with our adjudicator that there were grounds for Mr F to ought to be suspicious about what he says he was being asked to do. And about why he would need to be involved and would benefit to such an extent. It isn't sufficient for him just to say that he didn't know the specifics or that he didn't actually benefit. On his version of events, he opened an account and gave control of it to someone else and is fairly responsible for what happened. I also note that he has given an inconsistent explanation of what happened which means that it is difficult to find what he now says is reliable. For all these reasons I find it most likely he was complicit in what happened.

Barclays says that it applied the CIFAS marker because Mr F received fraudulent funds into his account. So, I've looked at whether Barclays was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr F's account of events and the evidence he has provided, I'm satisfied that Barclays had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr F received fraudulent funds into his account and didn't report this to Barclays at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Barclays had grounds to believe that Mr F had been involved in the use of fraudulently obtained funds based on the evidence it had.

Given this it decided to close his account in line with its terms and conditions. I appreciate what Mr F says about the impact of the marker and that he didn't expect this to be applied. But I'm afraid I don't have a basis to require Barclays to do anything further.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 17 October 2023.

Michael Crewe
Ombudsman