

The complaint

Miss A complains that Barclays Bank UK PLC has unfairly registered a fraud marker at CIFAS the national fraud database.

What happened

Miss A contacted Barclays when she found out about the marker. She says that she had no knowledge of fraudulent funds paid into her account and then withdrawn. Miss A says this is affecting her ability to have an account at any other financial business.

Barclays says it received a report on 31 December 2019 that two payments of £1,025 sent to Miss A's account on 24 December 2019 were fraudulently obtained. The money had been quickly withdrawn and spent using Miss A's payment card and PIN in Birmingham. Barclays said that Miss A's account was accessed multiple times using mobile banking at the relevant time. And that a payment of £3 on 26 December 2019 bringing the balance down to a few pence was made using her mobile payment service. It wrote to Miss A to tell her it was closing the account and had no contact from her at the time.

Our investigator didn't recommend that the complaint be upheld. He said that:

- Miss A had explained that she left her card at home as she used her mobile phone to make payments. But she had no explanation for how someone had taken her card which she said was missing and also had obtained her PIN which wasn't written down.
- Miss A said she had only accessed mobile banking during 24 and 25 December 2019 to check her Barclaycard balance. But he'd noted 68 logins between 24 and 31 December 2019 of which 55 were made on 24 December 2019 - the day that the fraudulent funds were paid in.
- He didn't think that Miss A was unaware of what was happening on her account and said that the CIFAS marker wasn't added incorrectly.

Miss A didn't agree. She said that she wasn't in Birmingham until 26 December 2019. She has provided evidence she says supports this. She was travelling at the time due to meeting a friend from abroad and for work. She didn't recall looking at her account this many times on her phone. Miss A said she lives with family but didn't suspect anyone close to her was involved. However, she considered herself to be the victim and that this has affected her badly and means she can't access an account elsewhere. There were personal reasons why she didn't pursue this when her account was closed.

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 and that the evidence would support this being reported to the authorities.

I've considered the further information Miss A has provided and which I understand from its case notes that Barclays has already in the main seen. She has provided a screenshot of an electronic rail ticket from Manchester to London at 18:15 on 24 December 2019. And social media chats about her movements. She has a cooking video she says shows she was in London on the evening of 25 December 2019. And she's shown her difficulties in getting another account.

It is difficult to verify and so weigh this information other than about her failed account applications which I accept at face value. But even if I were to agree that Miss A was in the locations she says she was it doesn't help me resolve the following:

- How an unknown third party obtained her card from the family home and had this in Birmingham. And how that person found out the PIN when Miss A says she didn't need to use it herself as she made payments with her phone and says that this wasn't her main account anyway.
- Why there were so many logins to her account using her phone and mobile banking. I've checked and seen that many came at exactly the time the payments were credited and then withdrawn. Miss A is clear she didn't give her phone to anyone and seeks to use evidence of chats or an electronic ticket which I understand to be from that phone to support where she was. I'm afraid I don't find her saying she doesn't recall the multiple access to her account credible and nor that she wouldn't have noticed the large payments, and which were then withdrawn. The information indicates that close monitoring of her account was taking place. And so, I find it difficult to see why she wouldn't reasonably have raised this at the time with Barclays.
- After a cash point withdrawal of £500 on 24 December 2019 there were two declined attempts to make a payment of £1,128 at a store. Barclays says these were flagged on suspicion of fraud and that a text was sent to Miss A's phone and a reply made that it was a genuine payment. I know Miss A says she has now changed her phone and doesn't recall the text. But there was most likely some way in which this payment which then went through was confirmed and the account allowed to continue to operate. And I can't see how that came from anyone other than Miss A.
- Miss A told Barclays she didn't make the £3 payment on 26 December 2019. But Barclays has shown that this was made with the device used by Miss A to access her account before.

I appreciate Miss A's genuine distress at the CIFAS marker and that she hadn't anticipated that this could happen. But I'm afraid I don't find it most likely that she knew nothing about the way her account was being used given what I've said above. Even if as she says she wasn't in the relevant location that wouldn't rule out her allowing someone else to use her account. I'm not persuaded that the person using her account was an unknown third party and I consider she allowed her account to be used in a way that facilitated the payment away of these fraudulently obtained funds. I don't think she was unwitting in this and I find she reasonably knew about the transactions on her account.

Barclays says that it applied the CIFAS marker because Miss A received fraudulent funds into her 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. This essentially means that Barclays needs to have enough information to make a formal report to the police. 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 Miss A's account of events and the evidence Barclays 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:

- Miss A received fraudulent funds into her account and didn't report this to Barclays at the time.
- She allowed the withdrawal of the funds and so was effectively in control of who had the benefit of this money.
- Barclays had grounds to believe that Miss A had used fraudulently obtained funds based on the evidence it had.

As a result, I don't have a reasonable basis to require Barclays to take any further action. I appreciate how disappointed Miss A will be with this outcome.

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 Miss A to accept or reject my decision before 9 December 2020.

Michael Crewe
Ombudsman