

The complaint

Mr K complains that Barclays Bank UK PLC closed his account, recorded a marker at CIFAS the national fraud database and hasn't responded to his requests for information.

What happened

Barclays wrote to Mr K in May 2019 to say that it would be closing his account with immediate effect. He tried without success to open an account at a different business. And he found out that Barclays had registered a fraud marker. Through his representative he tried to pursue a complaint about this and make a subject access request (SAR). But even after he contacted Barclays again it didn't deal with this. He says he no longer wants an account with Barclays but that it hadn't accused him of anything, and the marker should be removed.

Barclays says that it received a report that a payment of £3,984 credited to Mr K's account on 4 May 2019 was fraudulent. All of the money was withdrawn using Mr K's card and security information. It decided to close his account and said that it was correct to apply the fraud marker. It recognised that it hadn't responded to Mr K and his representative in a timely way and it issued a final response letter offering him compensation of £400 and a payment of the outstanding balance on his account of £0.16. It accepted that it hadn't responded to a letter Mr K had subsequently sent repeating his SAR.

Our investigator recommended that the complaint be upheld in part and Mr K be paid a further £200 for Barclays not responding to the SAR that had been made again in December 2019. He said that:

- Following receipt of the payment Mr K had withdrawn £2,500 in cash from his account and also purchased foreign currency.
- He'd listened to a call Barclays had with Mr K about his account when it explained that it needed to check the activity on his account as the pattern of spending had changed. Mr K confirmed the payments as genuine.
- During that call Mr K had indicated that he'd bought the Euros as he was going to Spain.
- Mr K had told him that a friend had asked him to receive a payment from that friend's father as he didn't have his card or cash. Mr K withdrew cash and bought the Euros and gave this to the friend. He says he'd been told that his friend wanted the Euros

and was going to buy clothing and he assumed had kept some of the cash. Mr K said he hadn't spoken to that friend since.

- The payment was from a company. Mr K had first told him that he didn't know who this company was. He later said that his friend's father owned the company and that he was told this shortly after he'd made the payments. That didn't seem consistent with him not speaking to the friend again and was material information he'd have expected Mr K to have told him.
- He didn't think Mr K had given a consistent account of what happened, and he thought that Barclays had sufficient grounds to add a CIFAS marker and close the account.

- It was clear that Barclays hadn't dealt with a renewed SAR even though Mr K had sent this by recorded delivery to the address he had for Barclays. He considered that further compensation was appropriate.

Mr K didn't agree. In summary he said that during the call with Barclays on 4 May 2019 the payments on his account had been verified. There was no explanation why if the credit was fraudulent Barclays had allowed the transfers. And he thought it would be speculation on the part of our investigator that the payment was reported as fraudulent some time later. He didn't think we'd asked Barclays about the evidence to show he was committing fraud and wasn't in fact the victim himself. And he said he was unhappy with the way his telephone call with Barclays had both been noted and summarised. Now he has had the belated SAR and has listened to a recording of the call he disputes saying he was going on holiday or that the Euros were for himself to use in Spain. He also maintained he wasn't asked specifically about what he knew about his friend's connection to the company and could only answer the questions put to him. His earlier statement "I do not know [name of company]" remained correct. And he did have a conversation with his friend after the payments which led to a dispute and so hasn't spoken to him since that time. He considered that we'd manipulated Barclays terms and conditions by saying it had a basis to close his account because of fraud when this allegation hadn't been put to him by Barclays. He didn't think that the compensation for the issue with the SAR was sufficient especially as he considered the information has been altered. But compensation wasn't what he is mainly seeking: it is the removal of the CIFAS marker so he can have an account elsewhere.

Barclays said it thought we should deal with the issue about the SAR after its final response as a separate complaint.

my provisional decision

I issued a provisional decision to this complaint on 19 November 2020. I set out below what I said.

I needed 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 said I was issuing a provisional decision so I can explain my reasoning. Clearly Mr K feels his emails and information has been misinterpreted and has made extensive reference to why he doesn't believe he has been inconsistent. And I was going to be introducing new points which he should fairly be allowed to comment on. I needed to say to him though that we provide informal dispute resolution and aren't a court. I was going to be deciding what I thought is *most likely* and I wouldn't be able to say *exactly* what happened here. I would deal with what I thought are the key issues and points he's raised here in making that assessment.

the call with Barclays on 4 May 2019

I'd listened to this call. I was satisfied that the purpose of the call was for Barclays to confirm that payments Mr K had made *from* his account were genuine. It wasn't specifically to ask about the credit of £3,984. Having looked at statements of his account those payments weren't the usual pattern.

In the course of the discussion he was asked if he was going away. And he said that he was

supposed to be going to Spain with friends in the next two to three weeks. And that money had been put into his account. I thought that an impression that the Euros were for him could have been formed. But he wasn't specifically asked that.

why his account was allowed to operate

I said I'd come on to the specifics of the SAR process below. But I needed to say to Mr K that I wouldn't expect Barclays to provide information to him about how fraudulent payments are reported and disclose information about third parties. And I wouldn't be able to disclose that to him either. But I could assure him that I knew that the fraud report didn't come in until after 4 May 2019. So, as I said above Barclays only concern on that day was about whether his payments were genuine.

Barclays hasn't made any allegation, but we have

This is a significant concern for Mr K. Effectively Barclays decided that Mr K's account had been used to receive and withdraw fraudulent funds. That gave it grounds under its terms and condition to close the account and add the CIFAS marker. That constitutes its position. Our role is to consider whether that was done fairly.

was Mr K a witting participant?

Mr K says he was out shopping with a friend and who asked him to receive this money. It isn't in dispute now that money had originally been obtained fraudulently and it passed through Mr K's account. I needed to decide whether it's fair for Mr K to be held responsible for this or as he argues that he was really a victim here too. I didn't think that any more forensic comparison of what he's said in various emails to this service is going to resolve that. To me the following are the most relevant points:

- Mr K says he agreed to receive money for someone else. He's no evidence other than his testimony to support that or who had the benefit of the money or what he was told about this.
- The money came from a company. Accepting Mr K's position that his friend hadn't told him this at the time this seemed unusual and on his account didn't raise any questions in his mind. I'd seen evidence he checked his account online and I couldn't see why he wouldn't reasonably have noticed and questioned the name of the sender. Even later he seemed to accept an explanation from his friend that this friend's father owned the company. I'd not seen any evidence to support that either.
- This was a large amount of money and especially given the normal pattern of entries in Mr K's account. Mr K has never indicated he found that a concern or questioned why his friend needed so much money that day. He says he assumed the friend would keep some cash back.
- There was a balance of £0.81 in Mr K's account before the money was credited at 12:23 on 4 May 2019. At 12:32 he withdrew £2,000 in cash from an ASD machine in a branch. At 13:18 he paid £1,450.93 for currency he says was Euros. At 13:24 he increased his limit for cash machine withdrawals from £300 to £500. And at 13:36 he withdrew £500 in cash. The small remainder of the money was used for payments that afternoon.
- While Mr K can correctly say that he wasn't specifically asked about the company at first by our investigator he gave the impression that he didn't know the connection to his friend. That's important for him in arguing there was some legitimacy to the payment. It's up to him to support his case with evidence and I thought it's puzzling this didn't come out earlier.

- There's no evidence presented that Mr K didn't act willingly in receiving the money and making these payments or that he's been intimidated into acting in this way.
- I would as I said deal with the SAR below. But now he's had that response there's no new evidence he's put forward. I know he refers to not having recordings of other calls, but he's not explained what he thinks those would demonstrate.

I found this leaves Mr K in a difficult position and with an onus on him to provide a credible explanation of what happened. What he says isn't supported with evidence. And the amount of money involved and the speed and manner in which this was withdrawn to me is consistent with the dispersal of fraudulently obtained funds. I concluded that the *most likely* explanation is that Mr K reasonably knew that these significant funds weren't legitimate. And that he is fairly responsible for the activity on his account.

the CIFAS marker and account closure

Barclays says that it applied the CIFAS marker because Mr K received fraudulent funds into his account. So, I'd 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 Mr K's account of events and the evidence Barclays has provided, I was satisfied that Barclays had sufficient evidence for the CIFAS marker to be recorded and to close his account immediately. In coming to this view, I'd taken into account the following reasons:

- Mr K 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 K had used fraudulently obtained funds based on the evidence it had.

responding to the SAR

I agreed with our investigator that this is rightly considered within this complaint as it is a continuation of what happened following the final response. Mr K wrote again with this request on 21 December 2019. I wasn't satisfied that it's reasonable for Barclays to say that this mightn't have been acted on given the address Mr K sent it to. It was a matter for Barclays to redirect this. And I agreed that there was further inconvenience for Mr K. However, I took into account whether the outcome of the SAR has made a difference especially as Mr K had been in touch with this service by December 2019 too. So, I agreed that a further payment of £200 is reasonable here making total compensation including the amount already offered by Barclays of £600.16.

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.

Barclays didn't make any comments.

Mr K said he didn't agree. He made clear that he denies any wrong doing on his part. He referred back to his email of 13 October 2020 and said that I had failed to address all his points in that. In particular he said that there was no evidence from Barclays to support there being fraud and he wanted to see the fraud report. Barclays had tampered with the disclosure of material under the SAR and had removed reference to the credit on 4 May 2019 being verified. This affected its credibility and I hadn't dealt with that. Mr K wanted to know why we hadn't asked Barclays what evidence it had that he wasn't a victim himself. Barclays hadn't complied with the SAR and had breached data protection law and we hadn't dealt with that. Mr K said he wasn't clear what new points I'd put forward and if I pointed them out he would deal with them. Having said all that Mr K said he would accept the compensation on a 'without prejudice' basis again bearing in mind that the outcome he wanted was for the CIFAS marker to be removed.

I need to say again to Mr K that this service provides informal dispute resolution. There isn't an option for him to accept the resolution with conditions and he needs to decide whether he accepts my decision in its entirety. If he doesn't then he remains free to pursue this matter in court subject to any relevant time limits. I have looked at the problems he was caused relating to the SAR, but he remains free to take up any breaches of data protection legislation with the Information Commissioner's Officer if he hasn't already done so.

I paid close attention to what Mr K said in his submissions to this service and I set out what I thought about that. Points about the service he received had been dealt with separately and I'm looking at the merits of his complaint. And as my reasoning I thought differed to our investigator I issued a provisional decision so he could comment on what I said. I don't have any new points to make now. But I will refer back to findings I set out above from my provisional decision.

There seems to be a fundamental difference between what Mr K believes happened during the call with Barclays on 4 May 2019 and my interpretation. As I said Barclays didn't verify a credit as genuine – but instead the payments Mr K had made from the account. And the verification came from him – that is to say he had made and recognised them. As I result I don't see that Barclays has tampered with its notes of the call in a way that affects its credibility. But in any event I have based what I think on the actual call recording.

As I said I've seen evidence that at the time of the call Barclays hadn't had a fraud report. That came later. Such a report was clearly that the credit to his account wasn't a genuine one authorised by the account holder through the relevant sending bank. This is the evidence of fraud. There is nothing else further I can say about that. We wouldn't disclose information about a third party and Mr K has made a SAR about his personal data so he can see the information he's entitled to. And Barclays would only be able to decide if Mr K was a victim too based on what he'd said and the evidence he had. But in any event I'm looking at this afresh taking into account everything Mr K has said. I'm afraid I conclude that there is more than suspicion of his involvement. Mr K received fraudulent funds to his account and withdrew them. It's fairly up to him to show that the funds were legitimately his. I can't see he has supported what he has said with evidence.

Having carefully considered what Mr K has said I consider my findings in the provisional remain appropriate for the reasons I've already given, and I see no basis to depart from them. The CIFAS marker was fairly applied in my view and I know how disappointed Mr K will be about this.

My final decision

My decision is that I uphold this complaint in part, and I require Barclays Bank UK PLC to pay Mr K a total of £600.16.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 February 2021.

Michael Crewe
Ombudsman