

The complaint

Mr R complains that Barclays Bank UK PLC closed his account and recorded a Credit Industry Fraud Awareness System (CIFAS) marker against his name. He feels the marker should be removed.

What happened

In January 2019, Mr R received a payment of £2,400 into his savings account. On the same day, the funds from the payment and most of the balance of Mr R's savings account were transferred to his current account. These funds were then withdrawn in two cash withdrawals of £1,950 and £300, and a card payment for £390 the following day.

Shortly afterwards, Barclays was contacted by another bank saying the original payment of £2,400 was fraudulent funds. It investigated and ultimately decided to close Mr R's accounts and record a CIFAS marker against his name.

Mr R said he'd lost his card but wasn't involved in any type of crime and had been the victim of fraud. He wasn't happy with Barclays' response and so brought his complaint to our service. One of our investigators looked at the complaint and thought Barclays had enough evidence to record the CIFAS marker. Mr R disagreed, so the complaint has been passed to me for a decision.

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 think Barclays had enough evidence to record the CIFAS marker against Mr R. I'll explain why below.

The marker Barclays has filed with CIFAS is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to record a marker like this, Barclays isn't required to prove beyond reasonable doubt that Mr R is guilty of a fraud or financial crime, but it must show that 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 that either there was an attempt to put fraudulent funds into Mr R's account or fraudulent funds have entered Mr R's account, and were either moved on or retained. And secondly, the bank will need to have strong evidence to show that Mr R 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 his account in order to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

Barclays has sent us details of the information it received from the other bank about the fraud and where the funds for the payment of £2,400 had come from. And from this, I'm satisfied the payment into Mr R's savings account was fraudulent funds.

The funds were then transferred to Mr R's current account and moved on within 24 hours. Barclays has also sent us evidence that the funds were transferred from Mr R's savings account to his current account using his online banking. And that the cash withdrawals and card payment were done using Mr R's card, with no incorrect PIN attempts before either the withdrawals or the payment.

Mr R said he lost his card. But I can't see how someone who found or stole his card would know his PIN. And given the number of possible combinations, it's extremely unlikely someone could guess the PIN correctly first time. So I think it's likely whoever made the cash withdrawals and card payment knew Mr R's PIN.

And Mr R hasn't given any explanation for how someone else would know his online banking log-in details, in order to be able to transfer the funds from his savings account to his current account.

I can't see why a fraudster would send fraudulent funds to Mr R's savings account without his knowledge. And I can't see how an unconnected third party would know Mr R's online banking details, have his card and know his PIN.

So, based on the evidence I've seen, I think it's likely Mr R was complicit in receiving the fraudulent funds. And so I think Barclays has met the requirements to record the CIFAS marker and I won't be asking it to remove it.

I've also looked at the terms and conditions of Mr R's account and I'm satisfied they allow Barclays to close his accounts immediately in these circumstances. So I think Barclays did act reasonably in closing Mr R's accounts.

Mr R also complained that the full balance of his accounts from before the fraudulent payment weren't refunded to him when Barclays closed the accounts. But Barclays treats the first money paid into an account as the first money then paid out of an account. So any money that was in Mr R's accounts before the original fraudulent payment, was then removed from his accounts by the transfers and cash withdrawals. And I think this is reasonable. So I don't think Barclays needs to refund anything further to Mr R.

Mr R also mentioned an account opened in his name with Barclays, that he says he didn't open. But this account never had any funds paid into or out of it. So Mr R hasn't suffered a loss as a result of it. And I don't think this account means Mr R wasn't complicit in receiving the fraudulent funds. So it doesn't change my decision on his complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 4 March 2021.

Alan Millward
Ombudsman