

The complaint

Mr H complains on behalf of his business, B, that Barclays Bank UK PLC wrongly placed a fraud marker against B closed B's bank account causing serious repercussions for B.

What happened

Mr H held personal and business accounts with Barclays.

Mr H is the director of B.

This decision will focus on Mr H's complaint regarding B's account. Mr H's complaint about his personal account has been addressed in a separate decision.

In January 2020, a payment for £3,000 was made into B's account from another bank, which I will refer to as Bank A. Mr H then made a number of transfers of those funds.

Bank A then contacted Barclays, indicating that the £3,000 payment it had made wasn't genuine, but had been made fraudulently. Barclays blocked all of Mr H's accounts and decided it needed to look into how Mr H was operating his accounts. Following its review, it placed a fraud marker against B with CIFAS, the Credit Industry Fraud Avoidance System. And it decided to close B's account immediately.

Mr H complained to Barclays. He explained that he hadn't known the funds paid into B's account were fraudulent. He told the bank that B had received the funds as payment for goods it had provided to a customer. He said because of the marker he was having difficulty opening another account, so B wasn't able to trade and lost out on business.

Barclays accepted what Mr H said about the funds and removed the marker on 9 April 2020. The marker was in place for just over a month. Barclays also offered Mr H £450 - £300 for the loss of business and £150 because it had taken more than 10 days to review B's account. Mr H said this wasn't enough to put things right. He said he wasn't able to file B's accounts due to B's account being closed and was liable for a £750 fine, he had difficulty opening accounts for B so lost out on business, and his mental health had suffered because of Barclays actions. So, he brought B's complaint to our service.

An investigator looked into B's complaint. She said that Barclays hadn't done anything wrong when it blocked and closed B's account. But she agreed that Barclays shouldn't have loaded a marker against B and that it had suffered inconvenience and financial loss as a result. She thought the bank's offer of compensation wasn't fair and said Barclays should also pay compensation to B for loss of profits, which she worked out amounted to £1,021.21 along with £150 for the delays. Barclays agreed. Mr H didn't. He says the amount of compensation offered doesn't adequately reflect the amount of distress and inconvenience he's suffered. As no agreement could be reached the complaint has come 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.

Cifas marker

The marker that Barclays recorded against B is intended to record that there's been a 'misuse of facility' – in this case using an account to receive fraudulent funds. In order to file such a marker, Barclays isn't required to prove beyond reasonable doubt that Mr H on behalf of B is guilty of a financial crime, but they must show there are grounds for more than mere suspicion of concern. CIFAS guidelines say:

- 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 the bank must first be able to show that fraudulent funds have entered B's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr H was *deliberately dishonest* in receiving the fraudulent payment and knew it was or might be an illegitimate payment. A marker should not be registered against someone who was unwitting, there should be enough evidence to show deliberate dishonesty.

From looking at the evidence, I accept that the payment of £3,000 which was paid into B's business account was fraudulent – in the sense that the holders of the account from which it was made didn't authorise it or were being tricked into making the payment. Their own banks would have investigated the payment before reaching that conclusion and contacting Barclays. Of itself, however, that doesn't mean that B was involved or knew the funds were fraudulent.

Mr H has explained that B received the payment in exchange for goods B provided to a customer – in other words B was an unwitting beneficiary of fraudulent funds. And he's been consistent in his explanation, which I find plausible. I haven't seen any evidence that Mr H committed a criminal offence. And I've not seen any evidence that Barclays thought this. So, whilst I can understand the banks concerns, I'm not satisfied that B was deliberately dishonest in receiving fraudulent funds. And I don't believe placing a marker against B was proportionate based on what happened. Nor am I convinced Barclays have met the industry best practice guidelines when placing this marker.

I'm pleased to see that Barclays removed the marker as soon as it had spoken to Mr H and accepted it shouldn't have placed the marker against B. The marker was removed on 9 April 2020, so it was in place for just over a month. Barclays has offered B £300 for the impact the marker had on B. So, I've looked at whether this offer is fair and reasonable.

I know Mr H has said that his mental health has been impacted and he's been caused a good deal of upset. But, when considering whether or not Barclays has done enough to put things right, I need to consider the impact Barclays mistake had on B, the limited company, rather than Mr H himself, who is the director of the company. That's because a limited company is a separate legal entity from the people who run it. I can tell a business to make an award for inconvenience in this situation, but only if it was experienced by the company itself, rather than the people bringing the complaint.

Mr H says B lost money because the marker made it difficult for him to open a new bank account and run his business. And he's provided evidence of declined bank account applications to support what he's said. I can see that the CIFAS marker was the reason B was declined accounts. So, I've thought carefully how this impacted B. In doing so, I've

looked at B's finances and its bank statements to work out B's financial loss based on its gross profit for the previous 12 months. According to the statements B's gross profit would have been £1,021.21 for the period the marker was in place.

I can see that the investigator has also asked Mr H on more than one occasion to provide evidence of any lost business – such as contracts. But he hasn't provided anything. So, in light of this, I agree with the investigator and think it's fair that Barclays compensate B for its financial loss and based on his previous gross profits this amounts to £1,021.21.

block and closure of account

Firstly, the investigator was right to point out that Barclays has important legal and regulatory obligations it must meet when providing accounts to customers. These obligations are ongoing, so do not only pertain to when an account is opened. To comply with its obligations Barclays may need to review an account and/or restrict its customer's access.

Having looked at all the evidence, I don't believe it was unreasonable in the circumstances for Barclays to block B's account. Barclays has explained that this was its standard procedure, and I accept that it was. That's in line with what most banks would do in the same situation, and it enabled Barclays to consider how best to react to the report it had received from the other bank about the £3,000. So, whilst I accept this caused B inconvenience, I can't say Barclays treated B unfairly when it decided to block its account.

However, I can see that Barclays told Mr H that the review would take around 10 days. But it took more than twice as long. Barclays accepts there were delays and have apologised for the inconvenience this caused B. It's also offered £150 compensation. Having looked at all the information, I think this is fair and reasonable compensation to pay in reflection of the inconvenience caused to B. So, whilst I appreciate Mr H will be disappointed, I won't be asking Barclays to do anything more.

Mr H says that the delay reviewing B's account meant he wasn't able to file his annual accounts with Companies House. So, he incurred a late penalty fee of £750. And he's sent in a notice to support he was late in sending information. But having looked at the information Mr H has provided it appears Mr H was due to file B's account on or before 3 February 2020, which was *before* B's accounts were reviewed. Barclays didn't block B's account until 9 February 2020, so there was nothing stopping Mr H complying with the request as he still had access to all the information he needed. So, I can't hold Barclays liable for any penalty Mr H might be facing.

Mr H wants Barclays to reopen B's account. But it's generally for banks to decide whether or not they want to provide, or to continue to provide, banking facilities to any particular customer. Unless there's a very good reason to do so, this service won't usually say that a bank must keep customer or require it to compensate a customer who has had their account closed.

Banks should however, give reasonable notice before closing an account. Usually, that means 60 days' notice, but it can be less – depending on the circumstances. In this case Barclays closed B's account immediately. Having looked at all the evidence, in my view that was reasonable given the banks concerns about how Mr H was operating B's account. So, it was entitled to close the account as it has already done. And I won't be asking the bank to reopen B's account.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint. To put things

right Barclays Bank UK PLC should:

- Pay Mr H on behalf of B £1,021.21 for the financial loss caused to B as a result of incorrectly applying a CIFAS marker and
- Pay Mr H on behalf of B £150 compensation for delays when reviewing B's account

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 26 May 2021.

Sharon Kerrison
Ombudsman