

The complaint

Mr S has complained that Barclays Bank UK PLC registered a marker against him at CIFAS, the national fraud database.

What happened

In April 2018, Mr S deposited a cheque for £1,110 into his personal Barclays account. He says he received the cheque at his business premises and thought it was addressed to his business, though he said he could not make out the writing on the cheque.

Mr S says he wasn't expecting to receive this money, so he had waited for a few weeks to see if someone would contact him about it. He says when no one did, he went to a Barclays branch and asked the staff what to do. He says they also couldn't read the writing on the cheque and he says they told him to deposit it.

In June 2018, Barclays received information that Mr S had deposited a cheque that was not meant for him. He had since spent the bulk of the money. They closed his personal account and registered a fraud marker against him.

In 2021, a different bank closed Mr S's account. Following this, he discovered the CIFAS marker and complained.

Our investigator looked into things independently and didn't uphold the complaint. They explained that the cheque was clearly addressed to someone else in neat handwriting. They said Mr S wasn't expecting the money and would've known it wasn't his to deposit. There was no evidence the staff had told Mr S what he said they'd told him, and the investigator didn't think it was likely they would've had any trouble reading the cheque, nor that they would've advised Mr S to deposit it. As Mr S had deposited and spent money he would've reasonably known wasn't his, they thought Barclays had added the CIFAS marker fairly.

Mr S didn't agree. He was adamant the branch staff had told him to deposit the cheque. He said he'd never committed any other crimes, which he felt evidenced that he hadn't done anything wrong here either. He argued Barclays were responsible for the fraud as they should have stopped the cheque from clearing. He questioned why they hadn't added the CIFAS marker straight away and why they only closed his personal account but not his business account.

Mr S asked for an ombudsman to review things afresh, so the complaint has been passed 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.

In order to register this marker, Barclays were not required to prove beyond all reasonable doubt that Mr S had tried to do something wrong. They did have to have reasonable grounds to believe he'd misused his account, going beyond a suspicion or concern, and with appropriate evidence to support this. I've carefully considered everything that both sides have said and provided, and I think that Barclays did have sufficient grounds to register the marker. I'll explain why.

I've looked closely at the cheque in question. It was written in very clear and neat handwriting, and it was addressed unambiguously to a limited company whose name was completely different to Mr S's name or Mr S's company's name. I do not think it's likely that anyone would reasonably mistake this as being addressed to Mr S or Mr S's company.

It's also clearly printed on the cheque who it's from – so Mr S would've known who sent it. I can't see that he had any prior dealings with the cheque's sender, and he's admitted he was not expecting any money of this amount. As far as he's told us, Mr S did not contact the sender or clarify why they sent the money or who it was for – but he deposited the money anyway. Mr S has not produced any evidence that he was entitled to this money, the cheque is clearly addressed to someone else, and the sender confirmed it was not due to Mr S.

Further, Mr S initially claimed he thought the cheque was for his business – but he paid it into his personal account. If he really believed the cheque was meant for his business, it's not clear why he'd do this. This is a minor point, but worth mentioning, as it casts doubt on Mr S's version of events.

Overall, I'm satisfied that Mr S would have reasonably known that this money was not for him. And it's not in dispute that Mr S willingly deposited the money into his account and then spent it.

Mr S says the branch staff told him to deposit this cheque, and I've thought carefully about this point. I can see the cheque was deposited in a branch, though because of the years that have passed there isn't still a record of whether this was done at a cashier's desk or at an automated machine. I have also looked at Mr S's historic account notes going back to the start of 2018, but there is no record of the conversation that he says took place, let alone anything to indicate that the staff told him to deposit the cheque.

Since there's no evidence of the conversation taking place, I've thought about what's most likely to have happened. As I said before, the cheque was written very clearly and I think it would have been apparent it was not addressed to Mr S. So if Mr S had asked the branch staff about the cheque and shown it to them, I think they would have told him *not* to deposit it. What Mr S says they told him does not fit with Barclays' policies or processes, and I can't see any good reason why the staff would have told Mr S to deposit a cheque that clearly wasn't his. So I don't think it's likely or plausible that they did.

Mr S says this is Barclays' responsibility, as they should have checked the cheque and stopped it from clearing. But while I understand the point he's trying to make, I'm afraid this isn't really relevant in this case. Firstly, Mr S still had a responsibility of his own to not take and spend other people's money when he would've reasonably known it wasn't his. And secondly, even if Barclays *had* stopped the cheque, they would still have been entitled to register the CIFAS marker against Mr S for *trying* to deposit it. This marker can be registered if a customer attempts fraud, whether they are successful or not. So even if Barclays had stopped the cheque, it would not have made a difference to the outcome of this complaint.

Mr S questioned why Barclays closed his personal account, but not his business account. It seems that's because the fraud took place on his personal account, not the business account. In any case, Mr S then closed the business account anyway, so I'm afraid I can't see that this makes a difference to the outcome of this case.

Mr S also questioned why it took Barclays some months to close his personal account and register the marker. That's because they didn't know the cheque had been deposited fraudulently until then. And to confirm, the marker was registered in 2018.

Lastly, I have also taken into account that Mr S says he has not been caught committing any crimes before or since. But while that may be true, it remains the case that here, Mr S paid in a cheque that was clearly addressed to someone else, which he was not expecting, and which he reasonably knew he was not due. And then he spent someone else's money which he would've reasonably known was not his to spend. So it was fair for Barclays to register the CIFAS marker. It also follows that I think it was fair they closed his personal account – and the terms and conditions allowed them to close it immediately in cases like this.

I understand that Mr S has been going through a truly tough time recently, and I know this will not be the outcome he was hoping for. But I've found that Barclays acted correctly in closing his account and registering the CIFAS marker, and so I cannot fairly tell them to remove the marker or otherwise compensate him.

My final decision

For the reasons I've explained, I don't uphold Mr S's complaint in this particular case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 July 2021.

Adam Charles
Ombudsman