

The complaint

Mr G complains that Barclays Bank UK PLC ('Barclays') registered a Cifas marker against him without due cause.

What happened

The circumstances of this complaint are well known to both parties, so I won't repeat them in detail here. But in summary, in Mr G's account was used to receive and quickly send on fraudulent funds. Barclays was notified that the sending account holder sent the funds after they had fallen victim to an 'invoice intercept' scam, and so they investigated Mr G's account, closed it, and registered a Cifas marker against him.

Mr G doesn't deny that his account was used to send and receive the funds, but he says that he was unwitting in doing so – he had no idea that they were fraudulent funds. In short, Mr G met a man on a dating application and communicated with him over a number of months. Mr G thought he was going to enter into a relationship with the man when he returned from working abroad. Over time the man told him of a series of difficult circumstances that had befallen him including being robbed, then ending up unwell and unable to pay his medical bills or fly home whilst in South East Asia. This led to Mr G sending the man money from his own funds, as well as from money he borrowed from his parents. When Mr G ran out of money to send the man, an alleged friend of the man persuaded him to receive money and to send it on to the man's doctor. From his perspective, he cared about the man and wanted to help him, and wasn't aware of the provenance of the funds.

Barclays have maintained that they were correct to load the Cifas marker and close Mr G's account. They said that he either

- did know what he was doing was wrong, as he had told them differing stories about what happened, and the evidence Mr G had sent them showed he tried to open an account with another bank to continue what he was doing after they closed his; or;
- was grossly negligent in allowing money to be received and sent from people he had never met, without any real questioning or challenging as to where the funds came from.

Mr G, represented by his parents, bought his complaint to our service and an investigator looked into what happened. They recommended that his complaint be upheld and the Cifas marker removed as they felt it was most likely Mr G was unwitting when he was used as a money mule – so they didn't think the evidential burden had been met to register Mr G with Cifas. Barclays disagreed – so the case 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.

Having done so, I have come to the same conclusion as our investigator did, and for broadly the same reasons.

It appears that both parties have accepted the account closure due to the situation surrounding this complaint, so I have not considered this as part of this decision. So I will be considering whether it is fair and reasonable that Mr G has a Cifas marker.

The type of Cifas marker that Barclays applied is for 'misuse of facility' – relating to the account being used to receive and send fraudulent funds. This is often referred to as being used as a 'money mule'. To file such a marker, Barclays are not required to prove beyond reasonable doubt that Mr G is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. Cifas guidance 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.

In this case, there is no dispute now that the funds that Mr G sent and received here were fraudulent. So the relevant finding for me to make is whether I believe Barclays have sufficient evidence to conclude that Mr G was deliberately dishonest in his actions in relation to these funds – or whether he was merely an unwitting money mule. Having considered all of the evidence, I think it is most likely that Mr G was an unwitting money mule – and so Barclays doesn't have enough to maintain the Cifas marker. I'll explain why.

Mr G has provided his lengthy correspondence with the man who he had been talking to, and the man's alleged friend, and I am satisfied that he was the victim of a romance scam. It is clear that he was spun an elaborate series of lies, that made him worry about the health and well-being of a man who he thought he had feelings for. And it was in trying to help him that he ended up allowing his account to be used to receive and send on fraudulent funds. There are many messages which evidence the story that Mr G was being told, and at no point is he told that the funds come from crime or any other questionable activity. It appears he believes what he is told – that the funds come from the man's friends who want to help him pay his medical bills and get home too. Mr G didn't benefit or profit from the situation in any way – in fact he lost a lot of money to this scam himself. And I don't think he had any comprehension that the funds were, or could be, fraudulent.

Barclays have suggested that Mr G wasn't honest with them in his interactions with them, in that his story changed when he had encounters with Barclays. They gave an example that when he came in to extend his overdraft he said he needed to help a friend in India, but at complaint stage he said they were in Indonesia. They said that if he was following instructions, he should have been concerned that he had been given varying stories. Barclays also says that Mr G had opportunities to tell them what was going on – and he didn't. They conclude that Mr G must, therefore, have known he was doing something he shouldn't have been doing. I am not persuaded by this argument. I think it is entirely plausible that Mr G was either scared or embarrassed to admit the reality of the story – it took him months to admit what happened to his parents. I also think there is a possibility some of the details – such as India instead of Indonesia – may have been genuine confusion on Mr G's part. I say this because I have seen nothing in the evidence that asks him to lie to the bank, and I think it is plausible that his mind could confuse two Asian countries with the same prefix if he was stressed and it was not a part of the world he was familiar with. So I don't think this is enough to say he acted with deliberate dishonesty.

Barclays have also pointed to the fact that the messages he provided show he tried to open an account with another bank to continue sending money to the man's doctor after Barclays closed his account. But I think this just goes to show that he was entirely taken in by the scammer, and even after his bank account was closed he remained concerned about helping him. This speaks to the level of trust he put in the man. Again, I don't find this is enough to say that Mr G acted with deliberate dishonesty.

Mr G's parent disclosed to us that he has learning difficulties which make it more difficult to make decisions than other people may find it. I think this made Mr G more vulnerable to the scam, and may have led to him making decisions that are questionable to Barclays, with the benefit of hindsight. But I've seen nothing that leads me to conclude that Mr G was deliberately dishonest – so I find that he was an unwitting money mule, and the Cifas marker should fairly and reasonably be removed.

Barclays have also suggested that he acted with gross negligence in allowing his account to send and receive fraudulent funds without any significant questioning or push back. But gross negligence does not amount to sufficient intention or knowledge of an offence to load a Cifas marker against someone.

So, having considered all of the circumstances of this complaint I find that it is not fair and reasonable to maintain the Cifas marker against Mr G.

My final decision

My final decision is that I uphold this complaint and ask that Barclays remove the Cifas marker registered against Mr G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 12 July 2022.

Katherine Jones
Ombudsman