

The complaint

Mr P complains that Barclays Bank UK PLC loaded a fraud marker against him on the National Fraud Database. He'd like it removed and compensation.

What happened

In October 2016 Mr P applied for a mortgage with Barclays. However the application was rejected, and in November 2016 Barclays decided to load a negative marker against Mr P on the National Fraud Database for application fraud. In recording the marker Barclays explained that on applying for a mortgage Mr P had provided fraudulent documentation. In 2020, when attempting to obtain financial products for a business he's a director of, Mr P discovered the marker and complained to Barclays.

Barclays looked into Mr P's complaint – however they didn't uphold it. They thought that they'd acted fairly in loading a marker against Mr P.

Mr P wasn't happy with Barclays response so complained to our service.

Mr P explained that he's a director of four limited companies, and as part of this role he's applied for bounce back loans which he thinks weren't successful because of the marker. He believes the limited companies he's a director of could have stopped trading. And the marker has also negatively impacted on his mental health.

Mr P's also explained that he's aware an additional marker was loaded with a second fraud prevention agency.

One of our investigator's looked into Mr P's complaint, and upheld it. She asked Barclays for evidence of why they thought Mr P had provided fraudulent documentation – Barclays explained they'd carried out additional checks at the time of Mr P's mortgage application and this showed some of the documents provided were fraudulent. However the bank explained they don't have these documents anymore. Our investigator concluded that although she thought Barclays likely had sufficient evidence to initially load the marker, they should now remove it. Barclays accepted the recommendation and confirmed in October 2021 the marker had been removed.

Mr P didn't accept our investigator's recommendation.

Mr P explained that he didn't agree that Barclays had sufficient evidence to initially load the marker and he wasn't satisfied the impact on him had been fairly considered.

Our investigator asked Mr P for evidence of the impact on him *personally* from the marker including any rejected applications for financial products – however nothing was provided.

Because Mr P didn't accept our investigator's conclusion the case was passed to me for a decision.

In reviewing Mr P's decision I came to a slightly different conclusion to our investigator. I

recommended that Barclays pay Mr P £250 in compensation for the error in loading the marker. Barclays accepted, but Mr P didn't. In response he said:

- He doesn't think Barclays carried out due diligence
- It's unacceptable that Barclays 'lost' the evidence and accused him of such a serious crime.
- It's not fair he's had to prove his innocence
- He doesn't agree that his businesses are separate to him
- £250 to Barclays is a very small amount

As Mr P didn't agree I've reviewed by outcome.

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 haven't changed the conclusion I reached in my provisional decision.

In my provisional decision I said:

Barclays have removed the negative fraud marker from Mr P's record because of a lack of evidence that any fraudulent documents were provided. However, it's important for me to consider whether Barclays had sufficient evidence to load the negative marker in November 2016. I appreciate that Barclays have explained that at the time of loading the marker they'd carried out due diligence to check if the documents supplied by Mr P were authentic – and they'd been advised this wasn't the case.

However the relevant guidance says to load a marker:

- *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.*

Barclays accept that they're unable to provide any evidence to meet the above test. Therefore, I'm satisfied that without any evidence, Barclays haven't met these requirements. It follows, I think the bank acted unfairly in loading the marker.

Barclays have confirmed that the marker on the National Fraud Database has been removed, however considering the lack of evidence provided to support their position I'd expect any fraud markers that have been recorded due to this, to be removed.

I've moved on to consider the impact on Mr P. Mr P's explained that he has four businesses which have been detrimentally impacted by the marker – and potentially they could have ceased trading due to not being able to obtain bounce back loans. I understand this will be disappointing to Mr P but as our investigator explained because the businesses Mr P's referred to are limited companies these are separate legal entities to Mr P. Mr P's brought this complaint as an individual – based on his relationship with Barclays – not on behalf of his businesses, therefore, I'm unable to consider the impact on them. The limited companies

would also not be able to complain to our service about Barclays' actions, because the marker was loaded against Mr P in his personal capacity.

However, I'm able to consider the impact of the incorrectly loaded marker on Mr P. Mr P explained to our investigator that during the time period the marker was loaded he hasn't been rejected for credit in his personal capacity. And he's not provided any additional evidence to show the impact on him. However, I think it's clear that in between Mr P discovering the marker and Barclays agreeing to remove it, he suffered distress. This included being concerned about his personal reputation and why the bank had recorded it against him.

In recognition of the distress caused to Mr P I think Barclays should pay him £250.

Provisional decision response

Mr P didn't agree with my provisional decision, in response he highlighted a number of points including he doesn't think Barclays carried out due diligence and he doesn't think they lost the evidence – instead they didn't have any. I'd like to reiterate the conclusion I reached in my provisional decision. In this decision I explained that because Barclays *haven't* been able provide any evidence I don't think they met the burden of proof required to load a marker in November 2016. This doesn't mean I think they *lost* the evidence, instead they've not provided me with evidence to show Mr P made a fraudulent application and therefore I don't think they acted fairly. And as Mr P has highlighted it follows I don't think they carried out sufficient due diligence. Mr P's also argued that £250 isn't a high amount of compensation for Barclays to pay – I understand why he's saying this. But it isn't our services role to punish businesses, we're not the regulator. That's the responsibility of the Financial Conduct Authority (FCA). And I'm awarding compensation based on the impact of the bank's actions.

I understand Mr P sees his businesses as part of him – but as I've explained they are limited companies and therefore separate legal entities to Mr P. This means I can't consider the impact on them from Barclays' actions.

Overall, I see no reason to amend the level of compensation I recommended in my provisional decision.

Putting things right

For the reasons I outlined in my provisional decision I think that £250 is fair and reasonable compensation for the distress Mr P was caused by Barclays.

My final decision

My final decision is I direct Barclays bank UK PLC to:

- Pay Mr P £250 in compensation
- Remove *all* fraud markers recorded against Mr P because of the mortgage application in October 2016.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 April 2022.

Jeff Burch

Ombudsman