

## **The complaint**

Mr K complains Barclays Bank UK Plc registered a fraud marker at CIFAS, the national fraud database. He doesn't think it's done so fairly.

## **What happened**

Mr K held an account with Barclays – he opened this at the start of June 2021. On 18 June, his account was credited with £5,600 through bank transfers. Immediately afterwards nearly all the money was withdrawn through bank transfers and paid to another business (a crypto currency exchange business).

Later the same day, payments into Mr K's account were identified as fraudulent - the bank from which the funds had come told Barclays their customer had been the victim of a scam. Barclays froze the account and wrote to Mr K on 21 June asking him to contact it with information about the payments. Following a review, Barclays wrote to Mr K giving immediate notice to close the account.

Mr K says he only discovered what had happened after the event and when other banks also closed his accounts. He contacted Barclays to find out what had happened and made a subject access request to CIFAS. CIFAS told Mr K that Barclays had placed a 'misuse of facility' marker against him.

Mr K explained he opened his Barclays account with the view to use it at university for student finance and therefore had no need to check or use the account until then. He said he didn't know anything about the fraud and didn't think Barclays had treated him fairly. But Barclays didn't think the fraud could have happened without Mr K's knowledge or involvement. It believed it had correctly registered the CIFAS marker and closed the account. It wouldn't agree to remove it. Mr K also asked CIFAS to look into things - it concluded Barclays had enough evidence to support the loading on its database.

Mr K referred matters to us. One of our adjudicators looked at the complaint. Ultimately, she thought that Barclays had acted fairly in the circumstances because its evidence showed the payments had been made using Mr K's mobile banking app and from a mobile device that matched Mr K's number. And as he'd said he hadn't disclosed his mobile banking information/passcodes to anyone she couldn't understand how the payments could have been made unless Mr K was complicit in some way.

Mr K told us about the difficulties he had had in opening a new account and the impact this has had on him. He stressed he had no knowledge of the fraud and provided detailed information, which showed he was working on the day the payments and that he hadn't benefitted from the money. He felt his Barclays mobile banking app may have been hacked and this had happened to his Apple ID. He said this explained how the fraud could have occurred on a different device using his mobile and banking app details. He said the fraudster could've switched off notifications, so he didn't get any information from Barclays. The adjudicator didn't change her mind, so the complaint has been passed to me.

## 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.

The marker that Barclays has filed is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, it's not required to prove beyond reasonable doubt that Mr K is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant 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.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr K's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr K 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 their account to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show complicity. To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account to understand their level of knowledge and intention.

Mr K has provided a lot of detailed information about his whereabouts when the fraud occurred. He's also provided information relating to his other accounts and told us about the impact the marker has had on him. I want to reassure Mr K that I have read and considered all of this as part of my review.

I note that CIFAS looked into Mr K's case and having done so, it was satisfied Barclays had enough information to make the filing to it. I need to decide whether I think Barclays has enough evidence to show fraudulent funds entered Mr K's account and he was complicit. And I'm satisfied it has. I'll explain why.

I've seen evidence from Barclays that it received a report from a third-party bank saying that the funds which entered Mr K's account on 18 June 2021 were fraudulent. Mr K doesn't dispute this – but advises he had no knowledge of any of this.

Once the funds entered Mr K's account, a number of transfers were quickly carried out to the same payee/recipient (a crypto currency exchange business) using the Barclays mobile banking app registered to Mr K's account. I've reviewed Barclays mobile banking records and these show that someone logged into the mobile app before, during and after the payments using a device registered to his mobile number. Mr K says this wasn't him and no one else knew his mobile banking details and passwords as he'd never disclosed or shared them. And his phone wasn't missing. So, I agree with the investigator in that it's difficult to see how someone could have done this without his knowledge.

Mr K has said someone had his Apple ID (it had been hacked) and this explains how they could have carried out the fraud using his device and app details. So, I've thought carefully about this. However, based on the available evidence I'm not convinced this is how the transactions were carried out. I say this because, prior to the fraud on 18 June 2021, the only other transaction on the account was a £2.00 payment in on 4 June, which was then paid out the same day, to the same crypto currency exchange business. Mr K's account was

opened at the beginning of June, so this wasn't long at all before the initial payment was made. Mr K says he has no knowledge of this either. But if this was genuinely an unknown fraudster, I think it's highly unlikely they'd wait 14 days before using the account again to move significant funds through it. Because an unknown fraudster wouldn't know if the account holder had checked their account and spotted the initial payment and payee details and reported it to the bank. It ran the risk that the account may have already been blocked, thus rendering the fraud redundant. Also, I can't see that any of Mr K's other financial accounts were similarly targeted. So, I don't consider this likely.

I've considered Mr K's explanation for where he was and what he was doing. But this doesn't mean he wasn't checking his account and facilitating the payments or allowing someone else to do so on his behalf with his permission. The payments didn't take very long to make. Based on the evidence, I conclude this is the most plausible explanation and so is most likely what happened here. And it must be noted the funds didn't need to have been transferred into his currency exchange account either for a misuse of facility to occur.

I'm sorry to hear about Mr K's personal situation and the difficulties he's facing, but I'm not going to require Barclays to do anything further here. For the reasons I've outlined above, I think Barclays followed the relevant guidance when loading a fraud marker against Mr K and closing his account in the given circumstances.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 July 2022.

Sarita Taylor  
**Ombudsman**