

The complaint

Miss O complains about Barclays Bank UK PLC's decision to record a fraud marker against her name.

What happened

Miss O held an account with Barclays for a number of years. In 2018, Barclays received a report from another bank to inform them that Miss O had been the recipient of fraudulent funds. Barclays carried out an investigation and decided to end their relationship with Miss O. The account was closed and Barclays registered a Credit Industry Fraud Avoidance System (CIFAS) marker against Miss O.

In 2020, Miss O realised she was struggling to open other bank accounts. One bank informed her to get a copy of her credit file and she noticed the CIFAS marker - she complained to Barclays. Barclays investigated things and Miss O informed them she thought her ex-partner had used her account fraudulently, and without her permission. Barclays reviewed things and noticed that the correct PIN and card had been used and cash withdrawals in branch were made so they were satisfied Miss O was involved. Barclays responded to Miss O's complaint and explained they wouldn't be removing the CIFAS marker.

Since the complaint was with our service, Miss O got in touch to say she found out from a mutual friend that her account had been used fraudulently by her ex-best friend – not her ex-partner. Miss O explained that her ex-best friend had asked to use her account for money transfers, and Miss O agreed without asking any further questions.

Our investigator responded to the complaint and explained that as Miss O had allowed a third party to use her account, she also accepted responsibility for their actions. And our investigator explained that there were no reports of unauthorised use made from Miss O to Barclays and therefore, she thought Barclays were reasonable to hold Miss O responsible and register the CIFAS marker.

Miss O disagreed. She explained that it didn't make sense for her to open the account in 2013 and wait until 2018 to commit fraud. Miss O stated that she was innocent, and she thinks Barclays may have racially profiled her and assumed she was guilty because of her race.

As an agreement couldn't be reached, the complaint has been passed to me to review.

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.

I've looked at whether it was fair of Barclays to apply the marker, based on the evidence and what the rules say about applying such markers.

Was the fraud marker applied fairly?

When a business is a member of CIFAS it can record a marker against an individual customer when that customer has used their account fraudulently. This type of marker will stay on record for six years and will usually make it difficult for a customer to take out new financial products as Miss O has encountered. In order to file such a marker, Barclays aren't required to prove beyond reasonable doubt that Miss O is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS 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 either there was an attempt to put fraudulent funds into Miss O's account or fraudulent funds have entered Miss O's account and were either moved on or retained. Secondly, the bank will need to have strong evidence to show that Miss O was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

It's not in dispute that the funds that entered Miss O's account were fraudulent and she didn't have any legitimate reason to receive these into her account. So, I have carefully considered whether Barclays could conclude she was deliberately dishonest in the receipt and utilisation of these funds and not an unwitting money mule. Having done so, I do think there is enough evidence to suggest that Barclays could reasonably conclude Miss O had been deliberately dishonest. I'll explain why:

- I haven't seen any evidence of reports of unauthorised use from Miss O to Barclays at the time the account was used (2018) until 2020 when she became aware of the CIFAS marker.
- The contact notes from Barclays show Miss O initially told them she didn't know who transferred the money, and then changed to confirm the money received could have been from her estranged father. Further conversations show that Miss O thought it was her ex-partner and has since changed to her ex-best friend. I don't consider in the circumstances; Miss O's story has been inconsistent.
- Miss O has confirmed to our service that she often let other people use her account to move money around and she had a close relationship with both her ex-partner and her ex-best friend
- Miss O confirms she shared her PIN and therefore I consider Miss O and the individual in question had an agreement which extends beyond this one payment.
- Money was withdrawn in branch, and therefore the individual who withdrew the money would have needed the card, PIN, Miss O's date of birth, and to match Miss O's description. I don't consider there is any other reasonable explanation on how this could have been varied out without Miss O's consent.
- Miss O is responsible for the use of her own account; and therefore should have been aware of why it was being used by third-parties.

In summary, I'm satisfied that by her own admission Miss O gave someone permission to use her account – and it was then used to receive and pass on fraudulent funds. Based on all of the available evidence and arguments, I'm more persuaded that Miss O was an active

participant in what happened. Miss O's testimony has been inconsistent and contradictory at points. So, I think it was fair for Barclays to register the appropriate fraud marker.

Discrimination

Miss O has said she believes Barclays racially profiled her and assumed she was guilty. This is a serious allegation for Miss O to make, and one I've thought about carefully. I've explained above why I consider Barclays' actions to be fair in the circumstances of what's happened. I've seen nothing to suggest Barclays made their decision based on Miss O's race or any other characteristic. Therefore, I won't be upholding the complaint on this point.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 11 October 2022.

Hayley West
Ombudsman