

## Complaint

Miss A is unhappy that Barclays Bank UK PLC (“Barclays”) recorded a fraud prevention marker against her. She says that she didn’t know the funds in question were fraudulent.

## Background

In late April 2020 and early May 2020, Miss A’s Barclays account received six payments, totalling £850, from two third-parties. Barclays subsequently received notifications from the banks which sent the funds confirming that its customers had been tricked into making the payments. Barclays reviewed Miss A’s account, decided to close it and also record a fraud prevention marker against Miss A.

After learning that Barclays had recorded a fraud prevention marker against her, Miss A complained to Barclays. Barclays looked at Miss A’s complaint and didn’t uphold it. As Miss A remained dissatisfied, she referred the matter to our service.

One of our adjudicators looked into Miss A’s concerns. She didn’t think that Barclays had done enough to show that Miss A was complicit in fraud and so it unfairly recorded the fraud prevention marker against Miss A. Barclays didn’t respond and so the complaint was passed to an ombudsman for a final decision as per the next stage of our dispute resolution process.

## My findings

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 with 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 isn’t required to prove beyond reasonable doubt that Miss A 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 Barclays must first be able to show that fraudulent funds entered Miss A’s account, whether they were retained or merely passed through. Secondly, Barclays also needs to have strong evidence to show that Miss A was deliberately dishonest in receiving any fraudulent payments and knew they were, or might be, illegitimate payments. This can include Miss A allowing someone else to use her account in order to receive illegitimate payments. But a marker shouldn’t 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 in order to understand their level of knowledge and intention.

In order to determine Miss A's complaint, I need to decide whether I think Barclays had enough evidence to show fraudulent funds entered Miss A's account and that she was complicit in this. It's important to note Barclays had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters here, there doesn't appear to be any dispute that Miss A's account was in receipt of fraudulent funds in April 2020 and May 2020. So I can understand why Barclays had concerns about Miss A's account usage and decided to carry out a review. However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. Barclays also has to produce sufficient evidence to show Miss A was complicit in fraud. And I don't think that it has done that here.

Miss A has explained that she was in contact with someone who said that they would help her get involved in trading. She further explained that she was told to provide her account details and she should transfer the funds on. Miss A has provided some of the messages she exchanged in support of her version of events. Our adjudicator found Miss A's version of events plausible and she thought that Miss A was unwittingly involved in fraud, rather than it being the case that she was complicit in it.

I've thought about what the parties have said.

I want to start by saying that I accept it is possible Miss A was actively involved in the fraudulent activity in the way Barclays says she was. But the important thing to remember is that it is Barclays' responsibility to demonstrate that Miss A was knowingly part of the fraud. And I think that it has failed to do that here.

Barclays needs to have relevant and rigorous evidence such that it could report the matter to the police. In other words, a reasonable suspicion that Miss A knew fraud would take place when she provided her account details. Simply pointing out that fraud took place and that Miss A transferred the funds in question, when she's never denied this is the case, just isn't enough to meet what is a high-bar. This is especially the case seeing as the messages Miss A has provided, which also appear to indicate that she lost some of her own funds, suggests that her version of events here isn't implausible.

Furthermore, there isn't any evidence indicating that Miss A made a financial gain either as the fraudulent funds in question were transferred elsewhere. Indeed, the content of the messages Miss A has provided suggests that she might well have lost some of her own money as a result of what happened. I would question why Miss A would risk some of her own funds if she was knowingly participating in fraud.

Overall and having considered everything, I don't think that Barclays had sufficient evidence to meet the test for recording a fraud marker against Miss A. As this is the case, I think that it was unfair for Barclays to record a fraud prevention marker in the circumstances that it did. So I'm upholding Miss A's complaint and Barclays needs to remove any and all fraud markers it has recorded.

### **My final decision**

For the reasons I've explained, I'm upholding Miss A's complaint. Barclays Bank UK PLC should remove any and all fraud markers it has recorded against Miss A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 5 August 2022.

Jeshen Narayanan  
**Ombudsman**