

The complaint

Mrs D complains that Barclays Bank UK PLC registered a marker at CIFAS, the national fraud database, when it closed her account.

What happened

Mrs D says her sister lives abroad. And that she agreed to receive money from her sister's fiancée and send this to her. She is unhappy that her account was closed, and a fraud marker added.

Barclays said it hadn't made a mistake. Mrs D had received two payments from the same account – one for £1,510 on 9 August 2021 and the other for £4,000 on 31 August 2021. She had accessed this money. In October 2021 the person sending the money had said that he was the victim of a scam. And Barclays had reviewed Mrs D's account and decided to close it. It said it was required to report what happened to CIFAS.

Our adjudicator recommended that the complaint be upheld. Guidance from CIFAS about applying a marker was that:

*“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.”*

She said that to meet this standard of proof Barclays should have given Mrs D the opportunity to explain the activity on the account. It hadn't done so at the time and it didn't have any evidence to show that she was complicit in what happened. Our adjudicator said that she found Mrs D's testimony now to be both plausible and persuasive. So, there were insufficient grounds for the marker although Barclays was entitled to close Mrs D's account. She said that Barclays should now either return any remaining funds to the person sending them or release the money that was in the account at closure to Mrs D. It should also pay her £200 for inconvenience.

Barclays didn't respond to the view, so the case has been passed for a final decision. Mrs D said that she needed her money back to pay her bills. She has provided details of the payments of the money she made to her sister and that she has been turned down for a credit application this year.

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.

Through our adjudicator I asked Barclays whether it would now be returning all the

remaining funds in Mrs D's account to her. Or whether it was holding any money in respect of the payments that had been reported as fraudulent. It confirmed that given the information Mrs D had since provided about the subsequent credits to her account and the time that had now passed it can release the funds to Mrs D.

I need to consider whether the report to CIFAS was made fairly. On this point, Barclays needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer 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 in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS 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.

I've taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mrs D was deliberately complicit in what happened include whether she knew or ought to have known that the money wasn't legitimate, whether she may have benefitted from the money by keeping part and whether she has provided generic or inconsistent explanations.

It isn't in dispute that Mrs D received and sent this money on herself. She's provided evidence of those payments and which is consistent with her sending the money on to her sister. She received two credits separated by over three weeks. There was no report of any issue with either of the payments until October 2021.

Barclays then received information that this money was obtained fraudulently. And it took the view that Mrs D was complicit in this because the money had come through her account. As has been referred to above the guidance from CIFAS is that it ought to have given Mrs D the opportunity to explain her position. It didn't seem to do more than tell her that her account had been restricted and then closed. Not doing so doesn't automatically mean that there was no basis for the CIFAS marker as it would depend on what she might have said. And I've now been able to consider this taking into account Mrs D's testimony.

Having done so I agree with our adjudicator that what she's said is persuasive. So, I don't consider Barclays has sufficient grounds for the CIFAS marker. But given its concerns about the fraudulent money it decided to close the account and I don't have a reasonable basis to interfere with that.

Barclays has agreed to refund the other money in her account as set out above. It had needed time to make checks to ensure she was entitled to this. I agree that the recommended compensation is appropriate for the distress caused by what happened.

My final decision

My decision is that I uphold this complaint and I require Barclays Bank UK PLC to:

- 1) Remove the CIFAS marker.
- 2) Pay Mrs D £200.
- 3) Pay Mrs D the residual balance in the account as it has now agreed to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 27 September 2022.

Michael Crewe
Ombudsman