

The complaint

Mr K complains that Barclays Bank UK PLC has registered a marker at CIFAS, the national fraud database and closed his account.

What happened

Mr K explains that he had advertised a computer for sale and was in contact with a potential buyer. Originally the money was going to be paid through an online payment service provider, but he says that method was refunded. So instead he received a payment of £1,120 direct to his Barclays account. He noticed that the buyer had given a business address for delivery and suspected that if he sent the laptop there'd be a claim back for the money too. So, he says he removed the funds to protect them as Barclays told him to and reported what happened to police. He says that he is unhappy that Barclays didn't respond to him and that it registered the marker. He wants his account reinstated and an apology.

Barclays said it wouldn't be removing the marker as it hadn't made a mistake. It accepted it had taken longer than normal to respond to the complaint and offered Mr K £100 in compensation.

Our investigator didn't recommend that the complaint be upheld. She said that the standard for a CIFAS 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.”*

Barclays had received a report that money sent to Mr K's account had been fraudulently obtained. Given Mr K's concerns she was unclear why he'd given the person who sent the money his bank details. Mr K had withdrawn and retained the money. And that made him complicit in receiving fraudulently obtained money. Barclays was entitled to decide not to continue to offer him an account. And it had grounds to apply the marker.

Mr K didn't agree. He said we hadn't requested the messages in which the buyer asked him to send the computer to what he'd established were business premises. He wanted to know how it could be shown he was deliberately complicit in what happened. He said we'd failed to ask for all the evidence including him reporting this to police. And we'd misunderstood the timeline. He wanted his complaint to be reviewed by an ombudsman.

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 can see that in response to his comments and question about who to send further information to, our investigator told Mr K to send it to her to add to our file. Nothing has been received. I've also listened to an earlier call our investigator had with Mr K about the case

when she asked that he send any kind of evidence he had. So, I think he's had a reasonable opportunity to do so and to clarify any points including about what he sees as the timeline of events.

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 looked at the material Mr K has provided. There was an exchange of messages with the buyer on 30 August 2020, but this only shows what the buyer said. There is a copy of Mr K's request for payment using the online payment provider. As Mr K indicates that would have given the buyer some protection. He says he was suspicious when instead the buyer wanted to send the money to his account which would give no guarantees. And Mr K says that the address for delivery was a business address which I've no particular reason to doubt.

Mr K says he was suspicious of anyone who would send money in this way. In his correspondence with Barclays he says he didn't provide the buyer with his account details. Notably in an email to Barclays of 8 October 2021 when he was answering a question about how the buyer got his details he said that *"if I knew that then I myself could perhaps have gone to police about this sorry affair."* He went on to say *"So here's my take. I have probably given my bank account details to more than 100 buyers...So I think that the person who claimed to be [the name of the buyer] was most likely to be a previous buyer who wanted to chance his luck."* He went on to say that this and the request to refund a more secure payment method and send the computer to a business address meant he knew the intention was clear to defraud him. He'd send the laptop and then the money would be claimed back.

While this explanation of how the account details were obtained isn't impossible it does seem unlikely. And Mr K's concerns were only based on what he thought might happen, it's not what actually did. He says that's because he prevented it and I want to look at that in detail.

The payment of £1,120 shows as credited to his account statement on 1 September 2020 and he transferred £1,100 to his Barclays savings account that day. He was in 2021 given a branch stamped copy of an extract of the Barclays 'customer notepad' relating to him. This states that on 3 September 2020 he'd phoned because his online banking had already been blocked. And a note was made that he'd go to branch and as he did to try and withdraw money. It's clear the manager he says he'd spoken with had been involved with him that day. And he withdrew the remaining money in his savings and current account. There are no notes of what he discussed with that manager and about whether he was told as he says to take the money out to protect it and as it would otherwise be frozen for some time.

I don't rule out there being some potential for confusion. But I think it unlikely that Mr K would have been told to take the money out had he made clear that he thought that these funds related to a potential fraud and he hadn't sent the buyer the computer. And frankly I'm struggling to see what reasonable basis Mr K thought he had to keep this money when he hadn't sent the item to any buyer and then had no intention of doing so.

He came to know that his account had been closed and then that there was a CIFAS marker. He knew that this related to concerns that he'd been involved with a fraud. He says he contacted Barclays on many occasions, had a solicitor, and even tried to contact the buyer at the address he had. I've no reason to doubt he contacted police, but I've not seen any details to confirm what he was told.

The position now is that he has received and kept money he hasn't shown he had a right to. He had no right to it when he withdrew it and he hasn't supplied a computer to anyone in relation to it. His intention never seemed to supply a computer if payment was made by bank transfer, but I haven't seen evidence he told the person sending the money this. The last message from the buyer I've seen was at 5:51pm on 30 August 2020 as follows *"I think it is best that I do a Bank Transfer and you can get the money straight away"*.

He says he's avoided being a fraud victim himself. But I note he now has money from a third party which has benefitted him and has led to an allegation he received fraudulent funds. He reasonably knows this isn't his money and he's not returned it to anyone. I appreciate that Barclays didn't discuss this further with him at the time, but I've been able to consider his explanation and evidence. Having done so I'm afraid this position is sufficient now for a conclusion that he's been deliberately complicit in holding money that has been obtained for something he factually didn't supply. I don't think his mitigation that Barclays hasn't done anything about this is reasonable to explain the position he's still in and he's fairly accountable for his own actions.

Barclays says that it applied the CIFAS marker because Mr K received fraudulent funds into his account. So, I've looked at whether it was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Barclays needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr K's account of events and the evidence Barclays has provided, I'm satisfied that Barclays had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr K received money into his account that he's not shown he was entitled to retain, and which was reported as fraudulent to Barclays.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Barclays had grounds to believe that Mr K had used fraudulently obtained funds based on the evidence it had.

I find that it was entitled to decide to close his account and apply the marker. I can appreciate how disappointed Mr K will be by my assessment and that I won't be asking it to do anything further. If he wants to receive the £100 Barclays has offered relating to the handling of his complaint he'd need to contact it directly. I won't be making an award for that amount as complaint handling isn't a separate regulated activity and taking into account my findings about his complaint.

If Mr K doesn't accept my decision he remains free to pursue this in court subject to any relevant time limits.

My final decision

My decision is that I do not 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 4 October 2022.

Michael Crewe
Ombudsman