

The complaint

Ms V complains that Barclays Bank UK PLC added a marker at CIFAS, the national fraud database, when it closed her account.

What happened

Ms V says she wasn't involved in any fraudulent activity on her account and that the marker is affecting her ability to access financial products.

Barclays said it wouldn't be removing the marker. It provided evidence that money paid to Ms V on 9 August 2019 had been reported as fraudulent. This money had been withdrawn in cash from her account that day. Its complaint notes make reference to Ms V stating that she believed her ex-partner was involved as he knew her PIN and online banking details. She had referred to her card being lost or stolen but this hadn't been reported. Barclays concluded that Ms V was complicit in what happened.

Our adjudicator didn't recommend that the complaint be upheld. He set out that there is a high bar for a CIFAS marker. He discussed Ms V's complaint with her representative. Her explanation was that she had seen an advert on social media for investment in cryptocurrency. And she'd been persuaded to provide her bank details. Although she'd initially indicated she didn't know who was involved she also disclosed that she'd provided her card and PIN to a third party too. Ms V insisted that she didn't know about the money paid into her account and didn't withdraw it.

Our adjudicator said that he thought it would be unusual for Ms V to hand over her account, card details and PIN to make an investment. And Ms V didn't appear to have any funds of her own to invest. None of the payments involved appeared to relate to crypto currency. And Ms V continued to use her account for genuine everyday spending after these payments with no record of her reporting her card missing. He thought she was reasonably aware of what was happening, and that Barclays had a basis to add the marker and close her account.

Ms V didn't agree. Her representative said that we'd failed to address the complaint. It wasn't for this service to carry out an investigation, but we should have assessed the approach of Barclays to see if it was fair and proportionate. The complaint is that Barclays hasn't responded to the complaint and we've ignored this.

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.

This service provides informal dispute resolution. It's a matter for Barclays and Ms V to decide what submissions and evidence to provide. Complaint handling in itself isn't a separate regulated activity. And while I know that the final response to Ms V from Barclays appeared incomplete, that doesn't prevent this service looking into things. And then me

making a decision about Barclays' actions – not any explanation it may or may not have given Ms V. Having listened to a call our adjudicator had with Ms V's representative and read his opinion I'm satisfied that Ms V has had sufficient explanation of the key payments involved here and what's been assessed. And that she was clear she had the opportunity to provide any more evidence.

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.

I referred above to what Barclays had recorded about what Ms V told it. That's not her explanation to this service and I assess here what her representative has said on her behalf. It's not impossible that Ms V was taken in herself by a scam having believed she was involved with cryptocurrency trading. The issue here is that there is nothing to support that explanation. Ms V didn't appear in addition to have funds available. So beyond allowing someone else free access to her account I'm not persuaded she reasonably thought she could benefit. I'm struggling to see how she could think that this was legitimate and on her version of events, having given that free access to her account, I think she is fairly responsible for the entries that happened. As our adjudicator says she continued using her account normally.

I'm satisfied that fraudulent money was received and that this was quickly paid out. I think it most likely that Ms V was complicit in what happened.

Barclays says that it applied the CIFAS marker because Ms V received fraudulent funds into her account. So, I've looked at whether Barclays 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 Ms V's account of events and the evidence she 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:

- Ms V received fraudulent funds into her account and didn't report this to Barclays at the time.
- She 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 Ms V had used fraudulently obtained funds based on the evidence it had.

In light of this it also decided under its terms and conditions to close the accounts. I

appreciate what's been said about the impact of the marker for Ms V. But I'm afraid I don't have a reasonable basis to require Barclays to do anything further. If Ms V doesn't accept my decision she 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 Ms V to accept or reject my decision before 31 January 2023.

Michael Crewe
Ombudsman