

The complaint

Miss B complains Barclays Bank UK PLC registered a fraud marker at CIFAS, the national fraud database and closed her account. She doesn't think it's treated her fairly.

What happened

On 18 October 2020, a payment for £2,350 credited Miss B's account with Barclays by faster payment. Miss B then made two payments using these funds to an account held with another provider but using her details. Soon afterwards, the payment into Miss B's account was identified as fraudulent by the bank where the funds had come from (they reported their customer had been the victim of a scam).

Barclays placed a block on the account and conducted a review. It later told Miss B that it would be closing her account. Sometime later, Miss B also discovered Barclays had placed a fraud marker against her with CIFAS. She contacted Barclays to complain in 2022, but it didn't think it had done anything wrong. It said, it had placed the marker in line with its internal policies and regulatory obligations. But Miss B didn't think this was fair.

Miss B referred her complaint to us. In doing so, she told us that she'd been a victim of a scam herself. She said:

- She responded to a job opportunity on a social media site that she was interested in it.
- After some initial contact she was persuaded to give her name, address, one form of identification, sort code and bank account number over to the person contacting her about a job. I shall refer to this person as M.
- £2350 credited her account but she thought this must have been sent to her by accident or a mistake. She got a call from M the same day about the money and she agreed to return it. M gave her the details of where to send the funds to. She sent the money to those details.
- Once her account was blocked, she asked Barclays about this and it said she'd signed up to something "fraudulent" and that's why it had closed her account.
- She immediately blocked M from her social media profile.
- She opened an account with another bank, but it closed that account after a year.

She explained she was naïve at the time and the loading was affecting her ability to get an account and a job, so she needed to resolve this issue quickly.

Our service contacted Barclays about this. It queried why Miss B had waited two years to raise this if she'd been a genuine victim herself. It noted Miss B had mentioned a scam but not given any details. Its records were limited due to the passage of time. But it did have

evidence to show that Miss B had set up payee details on 16 October 2020 for the fraudulent funds to be paid onto, including making a small payment of £6 on the same day (16 October). The payments had also been sent to an account that appeared to be in Miss B's name. Its view was that the CIFAS loading should therefore be maintained.

One of our adjudicators considered the complaint and didn't uphold it. He felt the available evidence suggested it was more likely than not that Miss B had been aware that what she was doing wasn't legitimate. He didn't think it was plausible that Miss B would believe she was getting money in relation to a job when she hadn't done any work or there weren't any details about employment.

Miss B didn't accept the adjudicator's findings. She provided screen shots of initial chats she'd had on social media, and which she said had led to her getting involved in things unwittingly. Our adjudicator considered the evidence but didn't change his view. He said that the screen shots only showed some initial contact with a person but not that this was in relation to an actual job, and there wasn't anything else to support why Miss B would then on the face of it, send money to herself.

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'm sorry to disappoint Miss B but I'm not upholding this complaint.

The marker that Barclays has filed 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 B is guilty of fraud or a 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 a bank must first be able to show that fraudulent funds have entered Miss B's account, whether they are retained or pass through the account.

Secondly, the bank will need to have strong evidence to show that Miss B 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 to receive an illegitimate payment. But a marker should not 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.

While I can't see Barclays asked Miss B for more information about what she knew, this isn't the end of the matter. As there are further considerations. In order to determine Miss B's complaint, I need to consider whether I think having regard for what we know there's enough evidence to show fraudulent funds entered the account and that Miss B's actions suggest she was complicit in this. And having considered everything, I find that Barclays is justified in recording the fraud marker here. I'd like to explain why in a little more detail.

Barclays received a report from the third-party bank that an incoming payment was from a fraud. There doesn't appear to be any dispute about this and I have seen the relevant report.

Miss B says she thought the payment had been sent to her by accident and she's a victim too. So I've looked at Miss B's evidence. She's provided screen shots of some initial contact with someone, M. There's certainly reference to an opportunity but there isn't anything to suggest that this is in relation to a job. But even if the opportunity was a job there's some compelling evidence, which suggests Miss B knew what she was doing or facilitating wasn't legitimate. I say this for the following reasons.

There's no further information or detail about a job, for example, what it was and what the terms would be. Our adjudicator asked Miss B about this to see if she had any other information, but she didn't. And so, what Miss B has described doesn't in my view sound plausible.

Miss B told us that when the large payment credited her account, she thought this had been sent to her by accident. But the name against that payment wasn't M's – it was for someone else. There's no persuasive explanation why she would think M had sent the payment using someone else's details. Or why she'd need to return it in two separate payments as opposed to the full amount that came in.

I've examined the technical evidence in the form of a mobile banking report from Barclays (from the relevant time). This shows Miss B had set up an account payee on 16 October 2020. This is the destination where the fraudulent funds were sent upon receipt (two days later). I can't be sure if Miss B owns the other account but I don't think it matters. Because I consider it highly unlikely Miss B would have created a new payee for the purpose she says, unless she was already aware on 16 October that she'd be receiving funds over the coming days and that she'd then need to send them on. Setting up this payee on 16 October isn't consistent with what Miss B says about the credit on 18 October being an accident - the technical evidence simply doesn't support this.

On the same day as setting up the payee details, Miss B also sent a small payment of £6 of her own money there. The adjudicator asked Miss B about this. In the call she said she couldn't remember this payment. But said it's possible M must have told her to send it and they'd then send it back to her. I've thought about this but there's no plausible explanation as to why Miss B would have needed to send her own money and get it back. This payment had a reference of "moving money", which is exactly the same reference that was used to send the fraudulent funds out of her account later. The purpose of the £6 payment is listed as "friends". Weighing all of this up, I'm afraid none of this supports Miss B's case that she genuinely believed this was in relation to a job and understood the larger payment was sent by mistake.

Considering all these factors together, I think it's more likely Miss B had knowledge of the fraudulent funds that credited and later debited her account. I've thought carefully about what she's said about being young and naïve at the time. But the available evidence

referenced above, including her actions suggests it's more likely than not she was complicit in receiving fraudulent payments in her account and sending these on knowing this wasn't legitimate. Of course, Barclays should have asked further questions as per CIFAS's guidance to its members. But I'm satisfied from looking at the evidence Barclays was reasonably justified in loading the marker. Indeed, its response to the complaint is that it should be maintained. It follows that I don't think it's treated Miss B unfairly and so there's no basis for asking it to remove the marker.

I appreciate Miss B might not have fully understood what the consequences would be in terms of potentially getting a marker and how this would impact her. But that doesn't mean Barclays made a mistake or acted unfairly in applying it.

For completeness, I'm also satisfied Barclays closed Miss B's account in line with the terms and conditions given the account activity and level of awareness. So, I find it made no mistake here either.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 2 March 2023.

Sarita Taylor
Ombudsman