

The complaint

Mr B complains that Barclays Bank UK PLC didn't refund a chargeback, loaded a negative marker against him on the National Fraud Database, recorded a default and closed his bank account. He'd like the debt written off, the default and marker removed and compensation for the impact on him.

What happened

Mr B had two current accounts with Barclays.

In March 2021 Mr B raised multiple chargeback claims against a gambling firm I'll call C. These totalled £480.

Mr B said he'd deposited the funds in his account with C, however the firm closed his account and therefore he wasn't able to use the funds.

Barclays raised a chargeback for Mr B and credited him the disputed funds. But this was defended by the merchant. So Barclays asked Mr B for further evidence to support the claim. Mr B didn't respond, so the claim was declined. And the funds removed from Mr B's account.

This led Mr B to enter an unarranged overdraft on his account, for which a repayment plan was set up. But, Mr B wasn't able to maintain the payments.

After reviewing things further Barclays made the decision to close Mr B's accounts with immediate effect. They also requested repayment of the outstanding debt, totalling £1,168.33. But Mr B didn't repay the debt. So, Barclays closed his account and loaded a default against him on 12 August 2021. They also loaded a Category 6 marker against him, for misuse of facility, on the National Fraud Database.

Mr B wasn't happy with Barclays' actions, so complained to the bank. But Barclays felt they'd acted fairly in loading the default and the marker.

As Mr B wasn't satisfied with Barclays' response he brought his complaint to our service.

One of our Investigators looked into Mr B's complaint. But they didn't uphold it. They thought Barclays acted fairly in redebating the funds and loading the default against Mr B.

Mr B didn't agree, in response he said:

- He was in a repayment plan but couldn't make payments due to his account being blocked
- He made multiple calls to Barclays to discuss his repayments during July and August 2021 but several agents couldn't find his account.
- He should have been given 180 days before he was defaulted but he was only given 90 days.

A second Investigator looked at Mr B's complaint, but they didn't uphold it. They agreed with the first Investigator but added that Barclays had also acted fairly in loading a negative fraud marker against him. But Mr B didn't agree, and said:

- How can his actions be considered as first party fraud?
- In what part of the Consumer Credit Act does it say a default can be loaded in three months?
- He's at risk of losing his job in financial services due to the marker

As Mr B didn't agree it's been passed to decide.

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.

Account closure

Barclays can only close accounts in certain circumstances and if it's in the terms and conditions of the account. Barclays have relied on the terms and conditions when closing Mr B's accounts.

There are a limited number of specific reasons allowing Barclays to fairly close Mr B's account with immediate notice. I've considered the full circumstances of Mr B's complaint and I agree Barclays were entitled to close Mr B's accounts with immediate notice.

Default loading

On 12 August 2021 Barclays loaded a default on Mr B's credit file. I've thought about whether it was fair for Barclays to load a default or not, and I realise this will disappoint Mr B but I think it was. I'll explain why below.

Several letters were sent to Mr B in June and July 2021 asking him to make contact to set up a new payment plan, and repay the outstanding debt. However, I've seen no evidence Mr B made contact to discuss this prior to the closing of his account and the loading of the default on 12 August 2021. However, I've reviewed the letters sent by Barclays and I agree they didn't issue a default notice as I'd expect them to.

I've thought about how this impacted Mr B – and whether by not sending a default notice, Barclays caused Mr B detriment. I've considered whether Mr B was aware of the need to repay the outstanding debt, and if the default notice was sent whether Mr B would have acted differently.

One of the factors I need to consider here is if the default notice was sent would Mr B been able to repay the outstanding balance within a reasonable timeframe. I asked Mr B what he would have done if received a default notice. Mr B explained he would have worked with Barclays to find a solution and repay the debt. But, he advised he wouldn't have been able to repay the debt in full, and believes at the time he had between £200 – £300 of disposable income a month.

I've considered whether Mr B would have likely reached out to Barclays if he was aware a default might be loaded on his credit file. On balance, I don't think he would have done. I say this as Mr B didn't respond to any of the letters sent prior to the default being loaded. Even if

he had I'm not satisfied I'd expect Barclays to agree a further repayment plan – they'd already agreed one for Mr B. But Mr B was unable to maintain payments. I understand he's explained challenges in repaying this due to his online banking being blocked. But, I've seen no evidence of Mr B attempting to discuss a new plan, or make payments towards the debt.

I've also considered the status of the debt now – Mr B tells me that over two years after repayment was requested £948 remains outstanding. For the reasons I've outlined, although I think Barclays should have sent a default notice to Mr B and given him 30 days to repay, Mr B wouldn't have been able to repay the debt within the timeframe. It follows I'm satisfied their actions here are fair.

Negative Fraud Marker

The marker that Barclays have filed is intended to record that there's been a 'misuse of facility'. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr B is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. The relevant rules say:

- *"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."*

To meet the standard of proof required to register a marker, Barclays 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.

The relevant finding for me to make is whether I think there is sufficient evidence to meet this standard of proof, to determine whether Barclays were entitled to escalate their concerns. Having reviewed the evidence presented by Mr B and Barclays I'm satisfied they've acted fairly here. I'll explain why below.

In March 2021 Mr B raised several chargeback claims with Barclays regarding deposits he'd made to C. He explained that on depositing the funds he wasn't able to access them because C closed his account. On the chargebacks being raised Barclays contacted the merchant, C, to see whether they disputed Mr B's claims. I've seen a copy of the report and evidence C used to defend the chargeback. I won't be sharing the full details of the report with Mr B – businesses are entitled to share information with our service in confidence, and I'm satisfied this in an occasion where this is appropriate. However, having reviewed what's provided, I'm satisfied Mr B more likely than not *did* have access to the funds in question and his account wasn't closed when he claims it was.

I asked Mr B whether he could provide any evidence to show his account was closed, or inaccessible at the time the deposits were made. Mr B supplied a conversation between him and C advising that there were no outstanding chargeback claims. But, he's been unable to provide any evidence to show his account was closed at the time of the deposits, in March 2021, or alternatively he wasn't able to access the deposits. Looking at the evidence supplied by C and the fact Mr B has been unable to show he *couldn't* access the funds, I can't say Barclays actions were unfair in either debiting the funds or loading a negative fraud marker.

Having reviewed all the evidence provided from Barclays I'm satisfied they've met the standard to load a fraud marker on Mr B's record. It follows I won't be asking them to remove it.

I realise this will disappoint Mr B but for the reasons I've outlined above I won't be asking Barclays to do anything further here.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 April 2024.

Jeff Burch
Ombudsman