

The complaint

Mr S complains Barclays Bank UK PLC won't refund transactions on his account which he says he didn't authorise and unfairly loaded a CIFAS marker against him.

What happened

Mr S opened an account with Barclays on 25 May 2023.

Mr S contacted Barclays regarding transactions on his current account which he didn't recognise. These occurred between 30 May 2023 and 6 June 2023 and were to betting merchants. A temporary refund was provided to Mr S whilst Barclays undertook a review of the transactions. On 12 June 2023, Barclays closed Mr S's account with immediate effect.

Barclays' review found that there wasn't evidence to support Mr S's claim that the transactions were fraudulent. It made the decision to immediately close Mr S's account and load a CIFAS marker against his name based on the evidence it had obtained. Mr S raised concerns about Barclays' decisions, explaining he had been a victim of fraud. Mr S explained the marker against his name was having a serious impact on him and he was struggling to open an alternative bank account.

Barclays issued its final response letter on 7 July 2023, explaining it wouldn't be removing the marker as it had been applied fairly. Mr S remained unhappy and referred his complaint to this service. An investigator reviewed Mr S's complaint and found that Barclays had acted reasonably. They explained in summary the following:

- Based on the available evidence they hadn't seen anything to show that the transactions were carried out by a third party.
- The loading of a CIFAS marker and the immediate account closure was fair given the circumstances.

Mr S remained unhappy and reiterated his position. Mr S says Barclays security system has been breached and the app security is open to manipulation. Mr S explained the funds were not withdrawn from the gambling site and he has evidence from the gambling company to support his position. Mr S said given the unclear circumstances it is unfair for the CIFAS marker to be applied as the impact on his finances is significant.

Unhappy with the investigator's review, Mr S asked for 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider good industry practice at the relevant time.

I'm aware that I've summarised this complaint briefly. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. This simply reflects the informal nature of our service.

Mr S's complaint involved three main elements, and I will address each in turn.

Disputed transactions

The relevant law here is the Payment Services Regulations 2017, and broadly speaking Mr S is responsible for any payments that he has authorised (either by making them himself or allowing someone else to) and he isn't responsible for unauthorised payments. Essentially if Mr S made the disputed transaction himself or authorised it to be made on his behalf, it would not be fair to ask Barclays to refund it.

Mr S says he was contacted about reclaiming tax, and during this call he provided personal details and downloaded an app. When Mr S spoke to our service, he said he had been at a party around the time the transactions took place.

Barclays has considered Mr S's testimony alongside the technical information it holds about Mr S's account and the transactions to reach the view that Mr S has authorised the transactions. I can't say with complete certainty how the transactions took place, but I must decide whether Barclays concluding that Mr S most likely authorised the payments he is disputing, based on the information available to them, is fair.

Barclays has provided the technical evidence it had relied on to decline Mr S's claim. The transactions were made using Mr S's debit card. Mr S says he was in possession of his card, and he hadn't reported it as lost or stolen. In order for the payments to be made access to Mr S's device would've also been required. The technical evidence from Barclays shows that the transactions were linked to Mr S's registered device and his security credentials would've been needed to authorise the payments. Mr S's online banking activity also shows that his account was accessed multiple times from his device during this period. Based on Mr S's comments it's difficult to establish how all these details could've been accessed by an unknown third party without his knowledge.

I must also highlight that the disputed transactions in themselves are unusual. The transfers appear to be funded by transfers into the account by Mr S from an account in his name. The activity is spread over a period of roughly one week. Usually if a third party somehow obtains access to an account, they spend the available amount quickly to maximise their gain before the activity is identified by the account holder. In Mr S's case the payments are all to gambling merchants, and generally winnings are paid back into the same account. This wouldn't be beneficial for a fraudster, who would look to obtain funds without additional complications. The activity essentially poses a greater risk to those carrying out the transactions and it seems implausible that an unknown third party would've taken these risks to carry out the transactions in this manner. There were also transactions to gambling sites prior to Mr S reporting fraud, so the transactions in themselves don't appear entirely unusual.

I've carefully considered Mr S's comments about security breaches. Barclays has confirmed that it isn't aware of any security issues with its online banking services. The IP address for the transactions also matches Mr S's device. Mr S says he was told to download an app and this is what allowed third party access. This scenario is often what we see with complaints about scams. However, Mr S isn't alleging he's been scammed, rather that there are transactions he knows nothing about. Mr S has provided limited evidence about what he alleges he downloaded and the impact this had on his device.

Having considered the nature of the transactions, it's unlikely to be malware. If a fraudster was sophisticated enough to put malware on Mr S's device without him knowing, I may expect them to attempt to use any available funds as quickly as possible. As noted above, the transactions Mr S has disputed aren't in keeping with what we generally see when a fraudster accesses an account. Especially as the transactions are to gambling merchants. So, I'm not persuaded third party access using malware is a plausible explanation for the transactions.

CIFAS marker

The marker that Barclays has filed is intended to record that there's been a 'misuse of facility' – in this case this is reporting a false disputed transaction claim.

To file a marker, Barclays is not required to prove beyond reasonable doubt that Mr S is guilty of fraud or a financial crime, but it does need to 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.

In practice what this means is Barclays needs to have evidence that Mr S has been deliberately dishonest in claiming that transactions were carried out on his account without his consent.

I've already considered whether I think on balance Mr S should be held liable for the disputed transactions. And I'm satisfied that he should. I'm not persuaded that these transactions were genuinely disputed when Mr S reported them to Barclays. I think the technical evidence demonstrating Mr S was accessing online banking is a strong indicator that he knew rather more about the situation than he'd initially disclosed to the bank.

However, the bar for loading a negative fraud marker is a high one. The negative fraud marker has serious consequences for Mr S, so I've thought carefully about whether there's sufficient evidence to conclude that he has been intentionally and deliberately dishonest when raising a claim.

Based on all the information I have; I'm satisfied CIFAS' evidential standard has been met. One of the factors I need to account for is how credible and persuasive Mr S's explanations for what happened are when weighed against the other information and evidence available to me. I have not found Mr S's version of events to be plausible. It has been inconsistent and doesn't add up with the sequence of events that Barclays has evidenced from its own records. I am also mindful of the timeline of events. Mr S opened a new account and very soon afterwards reported fraud. The temporary credit was immediately transferred out to an account in Mr S's name.

On balance, I find Barclays has reasonable grounds to believe Mr S was knowingly involved in a fraud or financial crime and there's enough evidence for it to have confidently reported that conduct to the police. As this is the case, I don't think Barclays has acted unfairly by recording a fraud prevention marker. It follows that I cannot fairly conclude that Barclays should have to remove the marker now.

Closing Mr S's account

I've no doubt that not having a functioning bank account has made things very difficult for Mr S, especially as he's described how difficult it is for him to obtain full banking facilities as a result of the fraud marker Barclays has loaded.

Barclays' review of Mr S's account led to its ultimate decision to close the account immediately. The terms and conditions of Mr S's account set out that the bank can close the account by providing Mr S with 60 days' notice. In certain circumstances, it can also close the account immediately. In this case Barclays immediately closed Mr S's account. For Barclays to act fairly here they needed to meet the criteria to apply their terms for immediate closure – and having looked at these terms and all the evidence that the bank has provided, I'm satisfied that Barclays did.

I appreciate my decision will be very disappointing for Mr S. But even taking into account the impact the fraud marker is having on him, I am unable to fairly and reasonably conclude that Barclays has acted unfairly. I don't think it was inappropriate for Barclays to decline the disputed transactions claim Mr S raised. I am also not persuaded Barclays has treated Mr S unfairly by adding a fraud marker or taking the decision to close his account. Barclays has paid Mr S £125 in recognition of its service failings when Mr S first raised his fraud claim. I consider this to be a fair offer which reflects the inconvenience caused. I won't be asking Barclays to take any further action or award further compensation.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 July 2024.

Chandni Green
Ombudsman