

The complaint

Miss N complains Barclays Bank UK PLC (Barclays) has registered a fraud marker against her on the national fraud database (CIFAS). She would like it to be removed.

What happened

In September 2022, Barclays received a report from another bank that a payment of almost £4,500 into Miss N's account was the proceeds from fraud. Barclays asked Miss N to get in touch about the payment but didn't hear back. Most of the funds had been spent – some were sent on to another account Miss N held (with 'W'), and some was sent to a different person. Barclays returned the remainder that hadn't been spent (around £400).

Miss N subsequently found out, and complained, that Barclays had registered a "misuse of facility" marker against her with CIFAS. When it didn't agree to remove the marker, she referred her complaint on to our service.

Miss N told our investigator there had previously been fraud on the account. In August 2022, someone had tricked her into handing over an "activation code" by claiming to be from Barclays. She visited her branch about this, and they had reset her details. Miss N says they also told her that her account had been accessed from another location.

Miss N said she didn't have access to her Barclays account at the time of the disputed credit – which she said she hadn't been expecting and hadn't moved on. She said she didn't know the other person the funds had been sent on to, and thought her account with W – where some of the funds were sent on to – had been compromised too. She noted, later in September 2022, she had been scammed from her W account. She received a call claiming she had received an overpayment on her student loans which she needed to return.

Our investigator didn't uphold Miss N's complaint. While Miss N had denied any involvement in the payments, Barclays provided a call recording of her confirming several payments on the account – which were made with the disputed funds – during the period when she said she wasn't using the account. The investigator thought Miss N was complicit in moving the fraudulent funds, and the marker had therefore been applied correctly.

Miss N appealed the investigator's outcome via a professional representative. It said Barclays' evidence that the transfer was fraudulent (the report from the sending bank) wasn't strong enough. But the investigator thought it was reasonable to rely on this evidence in the circumstances, noting Miss N had told us the money wasn't hers and was unexpected.

After we sent the representative the call recording of Barclays discussing some of the payments with Miss N, a different explanation was then provided for what had happened. Miss N said she had been contacted via a messaging app, whereby messages are deleted after a short period of time, by someone I'll refer to as 'C'. He said he had a legitimate way to make money that didn't involve any risks. Miss N said some online friends reassured her the opportunity was legitimate.

Miss N said C asked for her card details but she refused. She also said he told her he didn't need access to his account. But then he asked her for an activation code, and blackmailed her by saying he had set up a business account in her name. So, she shared the code. But he didn't explain what the code was for.

Miss N said she was told to expect a call from Barclays about the payments and to say she had made them. She said C threatened her as the money wasn't hers. She also said she hadn't told us about this earlier as she couldn't provide much evidence due to the nature of the messaging app they used to communicate, and due to concerns over her safety.

Our investigator provided this new information to Barclays but it wouldn't agree to remove the marker. The investigator concluded that was fair. In summary, they thought Miss N's explanation showed she likely knew, or suspected, the money being moved on wasn't legitimate. They had concerns over some of Miss N's explanations and evidence. For example, while Miss N said her W account had been hacked, and that was why funds were sent on there – she hadn't reported this compromise to W.

As Miss N didn't accept the investigator's outcome, her complaint was passed to me to review. Via her representative, Miss N said it was unfair to characterise what she had told us as a change in her testimony. She said she was young and inexperienced and didn't realise her account was being used dishonestly. And Barclays' evidence wasn't enough to justify the marker as it hadn't shown the money received was fraudulent, or that she was aware it was.

I then issued my provisional decision explaining why I wasn't minded to uphold the complaint:

The marker 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, Barclays isn't required to prove beyond reasonable doubt that Miss N is guilty of a fraud or 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.

What this means in practice is that Barclays needs to show that fraudulent funds have entered Miss N's account. It also needs strong evidence that Miss N 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.

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 to understand their level of knowledge and intention.

I've seen evidence from Barclays that it received a report from another bank that the ~£4,500 paid into Miss N's account was fraudulent. I appreciate Miss N's point that the record Barclays has shown us doesn't contain much about the circumstances of the reported fraud. So, this is something I'll be asking Barclays to provide more detail on in response to my provisional findings.

That said, I do think the fact another bank had reported the credit as fraudulent is, in itself, relevant evidence. Furthermore, when Barclays reached out to Miss N and asked her to explain the activity, she didn't respond. And even when she did get in touch with Barclays about the activity later on, she said she didn't know anything about the credit and denied moving it on. But Barclays had evidence to show her explanation was false. It has a recording of a call with Miss N during which she confirmed making several payments that were funded by the fraudulent credit.

So, Barclays had received a report that a credit was fraudulent – then didn't get a response from Miss N when it asked her to explain the activity. When she did reply, she didn't provide a legitimate reason for why she was receiving the credit. And dishonestly claimed she hadn't been involved with the funds being moved on. In the face of that evidence, I think it was reasonable for Barclays to report the CIFAS marker.

I appreciate Miss N has since provided a different explanation for the activity, which has been provided to Barclays. I agree with Miss N that Barclays should have done more to consider her response. While I have now received a response from Barclays confirming it won't agree to remove the marker in response to Miss N's further explanation, our service has struggled to get a response from Barclays, and it hasn't replied with the level of detail I'd expect.

However, that's not the end of the matter. I must now consider whether, given what we now know, there's enough evidence to show fraudulent funds entered the account and that Miss N's actions suggest she was complicit in this. And, having carefully considered this point, I do think Barclays is justified in refusing to remove the marker. I'll explain why.

Even on Miss N's new explanation, it's clear the funds paid in weren't money she was expecting or that she had a legitimate claim to. I consider that, coupled with the fraud report from the other bank, enough to show that fraudulent funds were received.

I also think it's relevant how and when this new explanation was provided. I've seen Barclays wrote to Miss N at the time asking about the payment, in September 2022. She didn't reply.

Then when she contacted Barclays to complain about the marker later, she claimed she didn't know anything about the credit. She maintained this when the case was referred to our service. It wasn't until December 2023, and only after we sent Miss N's representatives a recording of the Barclays call in which she confirms payments made using the funds, that she provided a different explanation.

Miss N says she didn't provide this explanation sooner as she was worried she didn't have much to back up what had happened. But I don't think that's a convincing explanation for why she was actively dishonest with both us and the bank about her involvement. It seems more likely that, once she had reviewed the call recording, she realised her claim that she had no involvement in what happened didn't hold up.

In saying that, as I've set out above, suggestion alone isn't enough to justify the marker. But in taking this point along with everything else we've been presented, I do think there is strong evidence to show Miss N was complicit in allowing someone else to receive/move funds through her account which she knew or suspected weren't legitimate. This is because:

- *Miss N's representative says she was not in control of her account from mid- to late- August 2022. But the device used to make the payments funded by the disputed credit wasn't added until early September 2022.*
- *This shows Miss N did have access to her account in August 2022. In fact, we know she visited her branch to dispute payments during that period. Another device had been added to Miss N's account in August 2022. But she told us she had been tricked into sharing a 'speedy registration' code with someone who called her claiming to be from Barclays. She hasn't told us this was linked to C.*
- *On the explanation provided about the speedy registration code accessed from her phone in August 2022, that calls into question what Miss N has said about the code she generated then shared with C in September 2022. She says C didn't tell her what the code was for. I don't think it's plausible she didn't realise that sharing the code would allow another device access to her account, given what had happened so recently beforehand. The steps she followed to generate the code, and the warning in the messages it was sent in, also made this clear.*
- *Overall, I consider there is strong evidence to show Miss N knew she had granted C access to her account. That is also apparent from the messages she has provided between her and C. While she says she had been told this was part of a legitimate and legal way to make money – I don't find it plausible that she thought allowing someone else access to her bank account, in breach of the terms, was a legitimate way to make money. She hasn't provided any other explanation of any work she understood she would be undertaking to legitimately earn money.*
- *It's also clear Miss N knew the account was being used to move funds. As, by her own explanation, she was told about the outward payments – and was told to lie and say she'd made them, and to give a false explanation for what they were for.*
- *I do appreciate Miss N says she was being threatened and coerced to do this. But I think this also undermines her argument that she thought the arrangement she had entered into with C was legitimate. I haven't been provided with a plausible explanation for why she would have thought, if there was nothing untoward about what she was doing, she would need to lie to her bank about the payments.*
- *We also don't have much to support Miss N's allegations about C. I do appreciate why some of this isn't available from the main messaging app she says they used. But, despite two requests for a complete copy of her text exchange/any other contact with C, I'm not satisfied this has been provided.*
- *Miss N provided a message from September 2022 in which C says he has taken Miss N out of her overdraft and asks her to "send me my money". Miss N responds angrily, and says he told her to "keep it after".*
- *When we asked for the full message exchange, Miss N provided some other messages from earlier in September 2022 in which she provides her Barclays' account details, then C says he's sent the money. Miss N queries why C needs the activation code and he says he doesn't. This post-dates when the device used to make the payments was added.*

- *What has been provided doesn't show the full text exchange. Even if the early September 2022 messages are the start of the exchange, I can see there appear to be later messages which are cut off prior to the messages about the overdraft. It also doesn't appear the later exchange is the last message. So, Miss N hasn't provided relevant evidence requested to support her explanation of what happened. And on what has been provided, I think there are discrepancies in her explanation.*
- *As Miss N's representatives have themselves highlighted, the guidance allows a CIFAS marker to be registered because the conduct hasn't been explained – including through discrepancies in the consumer's events. There was a discrepancy in the explanation Miss N put forward up to December 2023 – namely that the call recording showed it was untrue that she didn't know anything about the onward payments. There are further discrepancies in her account of what involvement she had and why she didn't provide this explanation sooner.*
- *Miss N's representative has argued that the scenario fits the regulator's description of a young person unwittingly drawn in without knowing they are involved in illegal transactions. Such as where they are presented with seemingly legitimate opportunities or plausible explanations for their actions – such as working for a legitimate company.*
- *Miss N's explanation doesn't suggest she thought she was working for a legitimate company – but rather for an individual she didn't know who she found through a messaging app which doesn't retain messages. Nor does it provide plausible explanations for why she thought allowing him access to her accounts in order to move funds, which she was told to lie to her bank about, was legitimate.*
- *Furthermore, while Miss N says she thinks her W account was compromised, it's clear she was also using the W account at the time of the disputed funds being moved on – up until it was closed in November 2022.*
- *Almost £3,400 from the disputed credit was paid into Miss N's W account. Around £1,750 was sent on to another individual. But then the remainder appears to have been used by Miss N. For example, on the day the funds were paid in, £100 is sent on to a family member. Then there is general spending on the account – including card spending in Miss N's local area, as well as transfers between other accounts she holds, and transfers to family members. This is strong evidence to suggest Miss N has retained the disputed funds.*
- *If not all these payments were completed by Miss N, and were actually done by C – it shows she still would have been aware of the payments in her account. We know she was monitoring its use, as she reported a scam later in September 2022, as well as an additional payment which she disputed as unauthorised. Despite all of this, she never reported to W that her account had been compromised, as she now alleges it was.*

Weighing all of this evidence up, I'm not persuaded Miss N's explanation for why she didn't know her account was being used to move fraudulent funds is credible. As our investigator pointed out, she knew C was using her account(s) to move funds which didn't belong to her – and she authorised this by being dishonest with her bank. Overall, I'm satisfied Barclays followed the relevant guidance when loading a fraud marker against Miss N. So, I'm not currently minded to ask it to remove the marker.

I invited both parties to submit any further evidence or comments. I also received further information about the circumstances of the fraud report from the other bank. I've let Miss N's representative know I'm satisfied this supports that the credit was fraudulent.

Barclays hasn't provided any further comments. Miss N's representative has replied to say that Barclays can't rely on another bank's work to register a marker. It has also reiterated its position that Miss N was an unknowing/unwitting money mule and was the victim of financial exploitation. It has highlighted her young age as a contributing factor.

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.

Having done so, I've decided not to uphold the complaint. This is largely for the reasons given in my provisional findings, which are set out above and which form part of my final decision. So, I'll focus here on responding to the information and points raised since my provisional decision.

Miss N's representative seems to suggest we, and/or Barclays, shouldn't rely on the information from the other bank about the credit being fraudulent. But I'm not persuaded that would be fair. Ultimately, Barclays received a report from another bank that Miss N had received funds she wasn't entitled to. So it needed to look into this.

In response to the fraud report, Barclays asked Miss N about her entitlement to the credit. She didn't reply initially, then provided an explanation it could see was false. In those circumstances, I'm satisfied Barclays acted fairly, and in line with CIFAS' principles, to record a marker. The further details we now hold about the credit – showing the holder of the account the funds were sent from reported the payment as unauthorised, which their bank confirmed via voice comparison – only adds to this.

I'd also point out that Miss N's own explanation for what happened supports, rather than undermines, that the funds were fraudulently received. As she's not told us she was legitimately entitled to the funds. While she says she was an unwitting money mule, that shows some recognition that C wasn't really offering a legitimate way to make money.

Overall, I'm satisfied Barclays has enough evidence to show fraudulent funds entered Miss N's account. That in itself doesn't justify the marker. As covered in my provisional decision, there should be strong evidence of complicity.

In response to my provisional decision, Miss N's representative has reiterated that she was unwitting. I have carefully considered what it has said about her age, and what they effectively argue was her naivety to the situation. As I do think her demographic is a relevant factor in determining whether she knew the payments received were – or might be – illegitimate.

However, in weighing everything up, I still consider there is strong evidence that Miss N was deliberately dishonest – as she gave a false explanation for the payments made using the fraudulent funds. And that she knew the payment at least *might* be illegitimate.

Miss N's representative has made reference to various publications around when someone acts as an unwitting money mule. Including the example of when someone is giving seemingly legitimate or plausible explanations for what is happening on their account. But here, it doesn't appear Miss N was given a plausible reason for why, in exchange for letting C access her account, she thought she was legitimately earning money.

Relevant to this, I do have concerns over what Miss N has disclosed to us and the bank. I can't disregard that she wasn't honest about what happened, and minimised her involvement, for a significant period of time. Nor that she only provided a further explanation once confronted with the call recordings confirming, contrary to what she had claimed, that she approved several payments made with the disputed credit.

In my provisional decision, I explained why I didn't think the message exchange provided between Miss N and C was complete, despite several requests for this. No further explanation has been provided about the apparent gaps I highlighted in the correspondence, nor have any further messages been provided. This means I'm left in a situation where, despite several requests, I'm not satisfied Miss N has fully disclosed her available contact records with C – which I would expect her to provide in support of her explanation.

Miss N also says that the account the funds were sent on to, also held in her name, was compromised/accessed by C. As I covered in my provisional decision, that does seem at odds with how Miss N went on to use her W account – including how the funds from the disputed credit were spent.

I do appreciate that having a fraud marker will have a big impact on Miss N. It's not a decision I would expect Barclays to take lightly. But having carefully considered all the circumstances, I'm not persuaded it would be fair and reasonable to direct Barclays to remove this marker.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 25 April 2024.

Rachel Loughlin
Ombudsman