

The complaint

Mr A has complained that Barclays Bank UK PLC registered a marker against him at CIFAS, the national fraud database.

What happened

In summer 2022, Mr A received some credits which were reported as fraudulent. Barclays asked him about them, giving him three days to respond. Mr A said they were payments for selling assets. He said he could gather evidence from the platform, but it might take longer than the three day deadline. Barclays also asked Mr A about unrelated credits which were not reported as fraudulent, though it lost his reply at first. Barclays closed Mr A's account and registered a marker against him at CIFAS.

Mr A came to our service. Our investigator gathered further evidence from both sides, though Barclays repeatedly delayed things. Mr A provided evidence that the disputed funds were from confirmed sales of cryptocurrency to buyers whose account names matched the names of the people who paid him. So our investigator proposed that Barclays remove the CIFAS marker and pay Mr A £250 compensation. Barclays didn't agree, so the complaint's been passed to me to decide.

I sent Mr A and Barclays a provisional decision on 1 April 2024, to explain why I thought the complaint should be upheld. In that decision, I said:

I need to consider whether this report to CIFAS was made fairly. On this point, Barclays needed to have more than just a suspicion or concern. It needs to be able to show that it had reasonable grounds to believe that fraud or a financial crime had been committed or attempted, backed up by evidence which would support it being reported to the authorities.

Mr A has provided evidence from the cryptocurrency platform showing that he sold crypto for the same amount of pounds as the disputed credits he received. The names of the buyers match the names of the people who sent Mr A the disputed credits. His messages with the buyers show that they asked for his bank details and willingly paid him, and one of them even sent a screenshot from the mobile banking app confirming they'd paid Mr A. The platform shows that Mr A provided the crypto which was bought, and the sales were marked as complete.

So it seems clear that Mr A was entitled to the money he received. He got it from genuine sales where he provided what was bought. I don't know why the credits were reported as fraudulent. It may be that the fraud reports were a false attempt to get money back, or that a fraudster used someone else's money to buy Mr A's crypto (e.g. via an account takeover), or that something else happened. But in those sorts of cases, Mr A would not have been able to reasonably know anything was amiss. I am not satisfied that he was a witting participant in any fraud. It follows that I currently think the marker should be removed.

I am unsure why Barclays will not accept this evidence – it has not been very forthcoming with its reasons. It has demanded to see bank statements from the buyers, but that is not reasonable in Mr A's situation. Mr A sold the crypto via an online platform. He did not know the buyers personally, and it is exceptionally unlikely that they'd provide their sensitive bank statements to a random person online they'd briefly interacted with years ago, whether the sale was genuine or not. I do not see the relevance of the requested statements here.

I can see that Mr A did answer Barclays' questions at the time. He explained the disputed funds came from selling assets, and he offered Barclays evidence from the crypto platform if it'd give him more time. But it doesn't look like Barclays took him up on this. As far as I can see, Barclays instead stuck with the closure of his account and the registering of the marker, and only asked him further questions about some irrelevant transactions which were not reported as fraudulent (which again, he answered in full anyway). That doesn't seem reasonable. Barclays should have followed up on Mr A's offer to provide evidence. Had it done so, and then had it assessed the evidence fairly, it seems most likely that this marker would've been avoided altogether.

Barclays handled things poorly in the time that followed, too. For example, it took too long to investigate or to respond to our service, didn't answer our questions properly, focused on the wrong transactions, and misplaced evidence. This seriously delayed the case.

In the meantime, Mr A has been unable to keep an account open, which has caused him substantial problems receiving his income or paying his bills. From what I understand, Barclays has caused him considerable distress and upset, along with significant inconvenience and disruption to his everyday banking over many months. So taking into account the impact Barclays' errors have had on Mr A, along with our guidelines for compensation, I currently think Barclays should pay him £550 compensation to put things right, in addition to removing the marker.

Both parties responded. Mr A accepted the provisional decision. I'll talk about Barclays' response below.

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.

Barclays said that Mr A had never provided it with this evidence before or sufficiently engaged with it. But as I set out in the provisional decision, he answered Barclays' questions in good time and offered relevant evidence. Yet instead of taking him up on that offer – as Barclays was required to do before adding this marker – it instead asked him about some irrelevant transactions (which he also answered) and then added a CIFAS marker without gathering the offered evidence. This was a significant failure on Barclays' part.

Barclays also argued it didn't think Mr A's evidence was good enough. It said it didn't fit with some internal guidance it had invented about what documents it'll accept. Barclays said that it would only accept evidence which was – for example – on headed paper, or was a full bank statement from the sender. It quoted some money laundering regulations.

I'm afraid these arguments are rather poor. This case is about a CIFAS marker, not money laundering checks. In order to justify this marker, the test is whether Barclays had reasonable grounds to believe that fraud or a financial crime had been committed or attempted, backed up by evidence so rigorous that it would support this being reported to the authorities. It needs to be able to evidence it had more than just a suspicion or concern. As Barclays should know, with a CIFAS marker like this, the onus is on Barclays to evidence that Mr A misused his account, not on Mr A to prove his innocence beyond reasonable doubt. And the question is whether I find Mr A's evidence to be fairly and reasonably convincing, not whether it meets Barclays' internal criteria.

Barclays' criteria doesn't seem appropriate in this particular case anyway. The money Mr A received was from selling crypto, and the platform involved does not usually issue statements on headed paper or relevant documents in the format Barclays wants. So it's not very reasonable for Barclays to expect Mr A to be able to get this. And it's unreasonable for Barclays to hold it against Mr A if he doesn't fulfil criteria which it never told him in the first place. Similarly, it is irrational for Barclays to now demand that Mr A somehow gathers full bank statements from crypto buyers he briefly interacted with online once several years ago. As Barclays should well know by now, it cannot simply quote its internal processes. It must be willing to depart from its processes when needed to treat customers fairly.

I find that Barclays has failed to provide sufficiently rigorous evidence to justify this marker. Indeed, the balance of evidence is in Mr A's favour. Because Barclays failed to investigate properly, it failed to gather sufficient evidence from the time. It does not have much in the way of evidence which actually substantiates Mr A was a witting participant in fraud. For example, it's plausible that the reports it got were the result of issues like account takeovers or false reports. On the other hand, Mr A has provided screenshots from the crypto platform showing that he sold crypto for the same amount of pounds as the disputed credits he received. The names of the buyers match the names of the people who sent Mr A the disputed credits. He provided messages with the buyers showing that they asked for his bank details and willingly paid him, and one of them even sent a screenshot from the mobile banking app confirming they'd paid Mr A. The platform shows that Mr A provided the crypto which was bought, and the sales were marked as complete.

So based on the evidence and the balance of probabilities, I still find that Barclays failed to justify adding or retaining this marker, and that it's most likely Mr A was not a witting participant in fraud here. It follows that Barclays needs to remove the marker in question and compensate Mr A for the impact it unfairly and unreasonably caused him.

Putting things right

I direct Barclays Bank UK PLC to:

- remove the CIFAS marker in dispute and any related marks; and-
- pay Mr A £550 compensation for the trouble and upset it caused.

My final decision

I uphold Mr A's complaint, and direct Barclays Bank UK PLC to put things right by doing what I've said above.

If Mr A accepts the final decision, Barclays Bank UK PLC must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 May 2024.

Adam Charles
Ombudsman