

The complaint

Mr A is unhappy Barclays Bank UK PLC have recorded a Cifas marker on his credit file and he'd like this to be removed.

What happened

Mr A says he allowed his friend to use his account which received a credit of £1,100 on 14 June 2023 and was withdrawn on the same day. Mr A's account was blocked whilst Barclays asked Mr A for further information about the payment that had been received.

Mr A didn't respond and so, in the absence of this information, Barclays subsequently closed Mr A's account and recorded a Cifas marker on his credit file, believing the payment into the account was fraudulent in nature.

On 6 August 2023, Barclays issued a final response letter explaining they had asked Mr A for further information about the credit that had been received into the account but as this hadn't been forthcoming, their decision to record the Cifas marker would stand.

Our investigator didn't uphold the complaint. He said he was satisfied Mr A was complicit in the fraudulent activity that took place on his account. He highlighted inconsistencies in Mr A's testimony and that ultimately Mr A allowed a third party to have access to his account which seemingly included the Personal Identification Number (PIN) for his debit card.

As Mr A didn't agree, the complaint has been passed to me to consider.

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.

The marker that Barclays have filed with Cifas 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 Mr A was guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. Their evidence must meet the 'four pillars' burden of proof, which are as follows:

1. That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted;
2. That the evidence must be clear, relevant and rigorous
3. The conduct of the Subject must meet the criteria of one of the Case Types;
4. In order to file the member must have rejected, withdrawn or terminated a product on the basis of fraud unless the member has an obligation to provide the product or the subject has already received the full benefit of the product.

In order for me to establish whether Barclays acted fairly in loading a Cifas marker against Mr A, I have to be satisfied from the evidence I've received that Barclays has met all four of these pillars.

I think Barclays has met all four pillars for the reasons I've outlined below.

Did Mr A's account receive fraudulent funds?

I'm satisfied based on the information provided by Barclays they've sufficient evidence that the funds paid into Mr A's account on 14 June 2023 were fraudulent. I'm therefore satisfied that Barclays met the first pillar to load a marker.

But this isn't sufficient on its own for Barclays to load a marker, I need to be satisfied Mr A was complicit in the fraud, so in summary was deliberately dishonest and knew the funds were fraudulent. So, I've moved on to consider this.

Was Mr A complicit?

Mr A has provided his testimony on the events surrounding the payment. There have been many inconsistencies, so it's difficult to establish exactly what happened. But I think it's more likely than not that Mr A was complicit in the fraudulent transactions that took place on his account.

Unfortunately I've not been able to listen to the call recordings that took place between Mr A and Barclays, however I don't think this matters too much because it doesn't seem to be in dispute what was said, so I have looked at the notes Barclays made of these phone calls.

When Mr A spoke to Barclays on 15 June 2023 at approximately 3.30pm he told them he didn't know anything about the funds of £1,100 that had credited his account or the withdrawal. However, when he spoke to Barclays again later that day at about 6pm, he said it was a friend who had transferred the money to his account.

When our investigator asked Mr A why there was such a big difference in the two answers Mr A gave to Barclays, he said he thought his friend was only transferring £100 across. Mr A has said he spoke to his friend in between the first call at 3.30pm and the second call at 6pm and his friend confirmed the value of the transactions.

But Mr A was aware that funds were due to be received into his account and that his friend would be making a withdrawal, so I think it's reasonable this would have occurred to him when he spoke to Barclays. So I find it most unusual that Mr A denied all knowledge when he spoke to Barclays at 3.30pm.

During the call at 3.30pm it seems Mr A said although he made a bank transfer of £64, he didn't notice the credit or the withdrawal. I've not been able to see the timings of the payments that credited and debited the account but if the transfer of £64 happened afterwards, I struggle to understand how Mr A wouldn't have noticed the fraudulent payment in, and subsequent withdrawal, because both would have been showing on his statement.

During the call at 3.30pm on 15 June Mr A seems to have told the bank he lost his card the day before (14 June) but he didn't attempt to report it. But it's hard to understand why Mr A would say this because Mr A also told our service he gave his friend the bank card on 14 or 15 June so it was either in his possession or possession of his friend at the point of this phone call.

In calls to our service Mr A said he had actually lost his card but had then found it. And in another call Mr A said his friend told him to say that he'd lost the card and was manipulating him. I also notice throughout the complaint Mr A has referred to the third party being his friend but also his friend's other friend. Taking everything into account and the different pieces of information provided to Barclays during the phone calls, Mr A has given conflicting information, and this therefore calls into question the reliability of his testimony.

Mr A has said it was his friend who made the cash withdrawal of £1,100 and that his friend also had possession of his card. Having looked at Mr A's statements, it seems that the withdrawal took place using an Assisted Service Device (ASD) which allows withdrawals of a higher amount compared to a standard cash machine.

Although I don't have the internal records from Barclays regarding this transaction, they have said the machine would have requested Mr A's date of birth and PIN. Mr A has said his friend would have known his date of birth, which I accept is possible.

Given that a machine was used to withdraw cash, I think it's more likely than not that Mr A's card and PIN would have been used to carry out the transaction.

Mr A has been inconsistent about who carried out the withdrawal as he's said to our service it was his friend but based on Barclay's call notes it seems that Mr A said he was the one who carried out the withdrawal. But as Mr A isn't disputing the withdrawal itself, it doesn't matter who carried out the transaction in terms of Barclays being able to load the cifax marker, as it's clear Mr A knew or ought to have known something untoward was happening. Again, this highlights a further inconsistency in Mr A's testimony.

Mr A has been given the opportunity to provide information to support his version of events by both Barclays and our service. In particular he has been asked for proof that his friend wanted to use his account but this information has not been forthcoming, and Mr A has said these discussions took place face to face.

I can see Mr A sent in various screenshots of messages on whatsapp where he is asking a third party to contact him and the messages say the third party has carried out fraud on his account. Whilst I have taken this into account, all of these messages post-date 14 June 2023. Mr A has not provided anything at all to show what he was told before allowing the third party to use his account.

Taking everything into account I think it's more likely than not that Mr A knew the funds received into his account were fraudulent and that he was complicit in this. Mr A's testimony has many inconsistencies and I've seen no evidence to suggest Barclays shouldn't have recorded the Cifax marker to be recorded on his file. It follows I won't be asking them to remove it.

I realise Mr A will be very disappointed with my decision given the impact it's having on him but there isn't any persuasive evidence that suggests Barclays have acted unfairly in recording a Cifax marker against him.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 31 May 2024.

Marie Camenzuli
Ombudsman

