

The complaint

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

What happened

In early 2023, Mr L had his phone and cards stolen. Around £29,000 was paid from his Barclays account using his card details on his phone. This went to a third-party account via an e-money transfer service.

Barclays put a hold on the payments and sent Mr L a form to dispute them as fraudulent. Mr L says he returned the form, but Barclays says it didn't receive it. So it let the payments go through. In the meantime, Mr L had transferred his Barclays balance to his other account.

Barclays registered a CIFAS marker against Mr L for making a fraudulent chargeback, and is holding him liable for the resulting overdraft debt. It did offer him £150 compensation for some poor communication.

Our investigator didn't uphold the complaint. Mr L appealed, so the complaint's been passed to me to decide.

I sent Mr L and Barclays a provisional decision on 29 May 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.

The type of CIFAS marker which Barclays registered is clearly incorrect. Mr L did not raise any chargeback, let alone a fraudulent one.

Barclays has instead suggested that it changes the marker to a first party fraud one, so I've thought carefully about whether that's reasonable.

As far as Barclays has been able to show, the payments only used Mr L's card details entered on his phone. I've not seen any evidence to show that any 3DS password, card reader, or other strong authentication was used. And Mr L's phone and cards were stolen, so there's a clear way that a thief could've made the payments without his consent.

Mr L has sent evidence that he blacklisted his phone shortly after it was stolen. And I can see that he then registered a new phone to his mobile banking, having transferred his phone number to that new device. So this all supports that Mr L did indeed lose his phone.

We spoke to the e-money transfer service about the disputed payments. They were unable to find out where the payments went. But they did confirm that they had not gone to any account in Mr L's name – they had records of his personal and business accounts, and none of them had received the payments. So the disputed payments went to a third party. This also supports that Mr L was defrauded.

While Mr L did empty his Barclays account, he explained he did so because his Barclays account had been compromised. That seems reasonable. And he says he did try to return the dispute form, though I cannot verify this either way.

I do acknowledge that Mr L's behaviour might seem rather odd. He did not help himself by failing to sufficiently follow up on this matter at the time. And he didn't take much reasonable action to try to mitigate his losses or deal with the overdraft. And so I appreciate that the matter may seem quite finely balanced. But it currently seems more likely that Mr L was defrauded, rather than that he was defrauding Barclays. I don't think Barclays has met the threshold of evidence needed to justify a CIFAS marker, and the type of marker it did add was incorrect. So I currently think it should be removed.

Given Mr L's lacking communication, his lack of action to mitigate the situation, and the balanced nature of the case, I do not plan to award any compensation beyond what Barclays offered for its own communication issue.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 26 June 2024. Barclays accepted the provisional decision, whereas Mr L didn't reply.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusions as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct Barclays Bank UK PLC to:

- remove any negative fraud markers it recorded against Mr L in relation to this matter;
- rework the account to remove the disputed payments along with any related interest and charges;
- remove from Mr L's credit file any record of the overdraft balance that the disputed payments caused; and-
- pay Mr L the £150 compensation it offered, if it has not done so already.

My final decision

I uphold Mr L's complaint, and direct Barclays Bank UK PLC to put things right in the way I set out above.

If Mr L 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 L to accept or reject my decision before 24 July 2024.

Adam Charles
Ombudsman