

The complaint

Mr N is unhappy that Barclays Bank UK PLC placed an adverse fraud marker against his name.

What happened

As the circumstances of this complaint are well-known to both parties, I've summarised them briefly below.

Mr N held an account with Barclays. In February 2022, Barclays received a report from a third-party bank informing it that Mr N's account had been in receipt of funds that were sent as a result of its customer being defrauded.

Barclays placed restrictions on the account and contacted Mr N asking him to explain his entitlement to the funds. Mr N didn't respond to these requests and so Barclays took the decision to close his account and load an adverse fraud marker against his name to the Cifas database.

Mr N later discovered the marker as it was having an impact on him obtaining financial services. He lodged a complaint with Barclays asking it to remove the marker.

Barclays considered Mr N's complaint but didn't agree it had made an error. It said that the account closure and loading of the adverse fraud marker were carried out in line with its obligations and the terms and conditions of the account. But it did offer to pay Mr N £100 in compensation for the delay in reaching an outcome on his complaint.

Mr N remained unhappy with Barclays' response, as he wanted the fraud marker removed and felt it was applied unfairly. So he came to our service for an independent review.

An Investigator considered the evidence provided by both parties but didn't recommend the complaint be upheld. Mr N didn't agree with the Investigator's assessment, so the matter has now been passed to me to reach a final decision.

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 considered all of the correspondence sent between Mr N and our service, it is clear that the only matter in dispute here is the loading of the adverse fraud marker against his name. I will therefore only comment on this issue in my decision.

One of the relevant considerations here is set out by Cifas: the fraud marker database controller. In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards regarding this complaint are:

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 such that the member [Barclays] could confidently report the conduct of the subject [Mr N] to the police.

My interpretation of these standards is that a member cannot simply load a marker against an individual based on mere suspicion. It must be able to meet a higher bar; in that a customer was likely a witting participant in the alleged conduct. This has been reinforced by Cifas' Money Mule Guidance, which it released to its members in March 2020.

In the circumstances of this complaint, Barclays has been able to demonstrate that a legitimate claim of fraud has been received for funds that were paid into Mr N's account. It has therefore satisfied the first of the above two standards.

Barclays also followed Cifas guidance when it received the report by attempting to contact Mr N to provide him the chance to prove his entitlement to the funds, but Mr N didn't respond. It therefore had a confirmed report of fraud and no defence from Mr N providing legitimate reasons for receiving those funds. I therefore find that the second of the above two standards has been met.

For these reasons, Barclays was fair in applying the marker at the time it did.

Mr N has since provided further information to our service regarding the purpose of the payment. This consists of evidence that he was running a number of businesses and an invoice for the payment reported as fraud by the third-party, along with another provided by his supplier for the property. Mr N provided testimony that this was a legitimate payment made to him for a business transaction. He told our service that the individual who'd made the payment did so for the rental of an apartment abroad. He told our service that the client had made a false claim of fraud.

Having considered these submissions, I'm not persuaded the loading should now be removed. Mr N has been provided numerous opportunities to supply evidence supporting his claims. To date, Mr N hasn't been able to provide our service with any communications between him and the third-party arranging the rental or providing the invoices he's supplied. Nor has he provided our service with communications between him and his supplier.

The invoices Mr N has provided contain no information about the customer, other than the name presented on the bank statement transaction, and contain errors, such as the tax percentage calculation. There is also a lack of provenance to these invoices considering that Mr N has been unable to provide the communications (e.g. an email message, a text message etc) they were supplied on. I therefore don't find these to be reliable submissions.

I've also considered what Mr N did with the payment once it entered his account. I can see that he transferred the funds almost immediately to his savings account and then back into his current account. He then made a number of small value card payments to retailers and a credit reference agency. He also made three card payments to a money remittance service totalling £1,219. Mr N has told our service that these payments were to his supplier abroad and provided an invoice to support that. But the total of the payments made don't match the amount due on that invoice.

When combining all the above information, I'm not satisfied that Mr N has now been able to provide sufficient information to support his claim that he was legitimately entitled to the funds reported. I'm therefore persuaded that Barclays acted fairly in declining to remove the marker.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 27 September 2024.

Stephen Westlake
Ombudsman