

The complaint

Mr O complains that Barclays Bank UK Plc (Barclays) closed his account and registered a Cifas marker against him without due cause.

What happened

Mr O opened a bank account with Barclays in September 2023 but in October 2023 Barclays closed this account without notice. A short while later Mr O had his bank account with another business closed and after looking into this further, he discovered that Barclays had also loaded a negative fraud marker against him on the National Fraud Database.

Mr O complained and asked Barclays to review its decision. Barclays looked into his complaint but didn't uphold it. So, Mr O brought his complaint to our Service.

Barclays told our Service that Mr O had ordered eight replacement cards in the 35 days the account was open for and six were dispatched to him. And on two occasions a replacement card had been ordered twice on the same day. So, the card was reported as lost/stolen before the physical card could have arrived. It explained that once requested, new card numbers could be issued via the Barclays app and the card details used before the new physical card arrives. It said these new card details were being used on gambling websites. It said it was likely these new cards were being requested to take advantage of free gambling offers available on new cards. Barclays said this was a false/fraudulent report of loss and that the customer was "*defrauding 'money' from the gambling sites.*"

Mr O told us the Cifas marker was causing him a lot of distress and anxiety. Mr O provided some background to his use of the account, noting:

- He'd opened the account because a relative (Mr B) wanted to do some gaming transactions but was getting things together for a mortgage so didn't want to do this from their own account. Mr B transferred Mr O money into one of Mr O's other accounts. Then when Mr B wanted to use the money for gaming, Mr O would allow Mr B access to his phone and then Mr B would transfer money from Mr O's other account to this one. Mr B would then use the money for gaming.
- Mr O said that when his account was shut down, he spoke to Mr B who explained he'd replaced the card about five times.
- Mr O had reported his card as lost/stolen/damaged three times because he'd lost the card.
- He said two of the reports of the card as lost/stolen/damaged were made because the replacement card that he'd requested earlier hadn't arrived.

Our Investigator looked into things and was of the opinion the loading of the marker was not appropriate in the circumstances. They felt that it was likely the reports of loss were false but didn't think fraud had taken place as no attempt to recover losses from the bank had been made. They said this didn't meet the high threshold required for a Cifas marker. They felt Barclays ought to remove the marker and any other linked fraud markers as well as paying Mr O £250 for the distress and inconvenience the marker had caused.

Barclays disagreed and it said the fraud it was reporting was the false reporting of lost/stolen cards. It stressed that there was no genuine use of this account and that the false reporting of cards happened almost immediately, so there were reasonable grounds to believe the account was opened solely for the intention of committing fraud.

So, the complaint was passed to me to decide. After reviewing things, I thought it was likely I'd reach a different outcome to the Investigator, so I issued a provisional decision to ensure both parties had the opportunity to respond before a final decision was made. In brief, I said that Barclays ought to have spoken with Mr O prior to loading the marker. But that I wasn't persuaded the marker ought now to be removed as I felt it was most likely the cards were incorrectly reported as lost/stolen/damaged. I concluded Mr O either requested the cards himself or knowingly enabled Mr B to do so and that Mr O ought reasonably to have realised that this was causing Barclays a loss.

Barclays provided no further representations. Mr O stressed that the replacement cards were ordered by Mr B and he was unaware of this. He said he would have stopped Mr B had he known. Mr O also didn't think that Mr B's actions had negatively impacted Barclays in any tangible way. Mr O said that the Cifas marker was having a profound impact on him and he offered to pay back the postage fees Barclays had incurred. He asked for a second chance.

I am now in a position to reach a final decision on this complaint.

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 Barclays filed with CIFAS is intended to record there's been a 'misuse of facility' – relating to false loss/theft reports.

The relevant considerations here are 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 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.

Barclays has said that the incorrect reporting of lost/stolen/damaged cards is fraud.

Barclays has provided clear evidence that multiple replacement cards were being requested on Mr O's account within a relatively short timeframe. The evidence also indicates that some of the cards couldn't have arrived before a further replacement was requested and that the card details were viewed, and on one occasion used, before the further replacement was ordered. Barclays has also noted a number of gambling transactions on the card, including soon after the card details were changed. Barclays has explained that some gambling websites offer free credit at the point a new consumer signs up with new card details. And that it has previously seen its replacement card option misused for this purpose. And based on all of this evidence, I can see why it suspected this was intentional misreporting to gain new card details.

But I can't see that Barclays contacted Mr O about what he was doing or why prior to loading the marker. And where it is considering loading a Cifas marker, I'd expect it to do so. I say this noting the guidance Cifas released to its members in March 2020 outlining best practice guidance when filing markers against 'Money Mules' against the National Fraud Database.

This broadly highlights the need to consider evidence supplied by the consumer and says that contact should be made with them prior to deciding to load the marker. This is typically to establish if the consumer has themselves been victim to a fraud or has been duped into unwittingly laundering funds through their account. Whilst I appreciate there is no suggestion that Mr O has been a money mule here, I still think the same principle should be applied. I think it is reasonable to expect Barclays to have checked there wasn't another explanation for the multiple requests, and that Mr O hadn't been a victim of fraud or somehow duped into requesting more cards. Without this, I don't think it can rule out vulnerabilities that may have caused or contributed to this situation. I say this also noting Barclays has provided no evidence from the gambling company to indicate Mr O's replacement cards were being used towards the purpose it suspected.

Barclays has applied the loading for the fraud of misreporting cards as lost/stolen/damaged. Broadly speaking, for this to constitute fraud, there needs to be the intention of making a gain or causing a loss, or the risk of loss to another.

Barclays has no evidence Mr O made a gain from the gambling companies. And Mr O made no gain from Barclays in this scenario either. But there is a loss here – Barclays has lost out on the costs associated with producing and posting a new card. Whilst I've seen no evidence to suggest the aim of ordering replacement cards was to cause Barclays this loss, I think the argument Barclays is making here is that Mr O would have recognised this loss was a risk/consequence of his actions and proceeded anyway.

But if Barclays is loading a marker based on what loss Mr O ought reasonably to have recognised, I would stress again that it ought to have given him the opportunity to provide his version of events.

So, I do think Barclays made an error here in loading the marker without speaking to Mr O. Had it done so, I think it's likely Mr O would have provided the explanation he gave our Service.

So, I need to consider whether, in light of this evidence, the marker should now be removed.

I note that Mr O's testimony is that he opened up an account in his name for Mr B to fund and use, handing over his phone to allow Mr B access to the app and online card at Mr B's request. If I accept this testimony, at minimum, it is a breach of the terms and conditions (which make clear that no one else should be given access to your payment tools). But this could constitute fraud by false representation as the account has been opened in his name for the purpose of being funded and operated solely by someone who is not Mr O – it's essentially Mr B's account.

In any event, I don't find Mr O's testimony persuasive here. I think it is highly unlikely that he personally lost three cards in the space of 35 days. I'd also note that the account was only being used for gambling transactions, which Mr O says Mr B was doing, so he'd have no reason to be carrying this card with him in any event. And Mr O has offered no explanation as to why Mr B was paying money into a different account in Mr O's name to fund this account, rather than making a direct transfer.

Having considered all of the evidence, I do think it's most likely cards were being incorrectly reported as lost/stolen/damaged to gain new card details to be used for gambling. Whether this was Mr O or Mr B is unclear, but I'm satisfied this is activity Mr O knowingly enabled. So even if Mr O didn't request all of the replacement cards himself, he allowed this to happen by providing Mr B with full access to the account and so I think he can be fairly held responsible for this activity.

Returning to the fraud marker for misuse of facility, for this to meet the threshold for fraud, a reasonable person would need to be aware that they were likely causing Barclays a loss. Six new physical cards were sent to Mr O over the course of a month. And I think an average consumer would understand that this many replacement cards, over such a short period, would come with associated costs for the business - in particular, postage costs.

I say this also noting that the account hadn't been open for long and within two days of the account activity beginning, a card was reported as lost/stolen/damaged. And I do think this adds weight to Barclays's suggestion this was an account opened for the purpose of misusing the replacement card facility. Which in turn indicates Mr O likely had awareness that this was causing Barclays a loss.

Taking everything into account, I'm satisfied that the loading of a Cifas marker is fair and reasonable in all the circumstances here.

I recognise Mr O has requested a second chance and has said he would have stopped new cards being ordered if Barclays had spoken to him before applying the Cifas marker. But Barclays loaded the marker based on the activity that had already occurred on the account which Mr O was ultimately responsible for. And for the reasons outlined above I don't think the evidence indicates its continued loading is unfair.

I note the terms and conditions of the account allow for Barclays to close the account immediately where there is fraud and so I'm also satisfied the closure of this account was fair.

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 O to accept or reject my decision before 2 December 2024.

Jade Cunningham
Ombudsman