

The complaint

Mr S complains Barclays Bank UK PLC recorded a fraud marker at Cifas and closed his account. He doesn't think it's treated him fairly.

What happened

I issued my provisional decision on this complaint and invited both parties to let me have any further comments and information before I reconsidered the case. Below is a copy of my provisional decision.

Copy of provisional decision

Following a review, Barclays wrote to Mr S to say that it would be closing his account on 28 April 2024 (giving two months' notice). It then wrote to him again on 2 April, to say that it had decided to close the account immediately.

At the time, Barclays also filed a misuse of facility marker against Mr S at Cifas. Barclays believed Mr S was falsely reporting the loss of his cards given the frequency and time over which the loss was being reported.

Mr S found out about the marker after another account he held elsewhere was frozen. He complained, saying he hadn't done anything which justified the bank loading a fraud marker against him. Barclays reviewed the complaint but didn't think it had made a mistake.

Mr S brought his complaint to our Service.

One of our Investigators initially concluded Barclays had added the marker correctly, based on the evidence it had, but she later changed her opinion, after she reviewed details of a Data Subject Access Request (DSAR) that Mr S had obtained from Barclays and Cifas, which included internal notes.

She felt the frequency with which replacement cards had been ordered may have looked suspicious, but she also noted Mr S had said:

- *On a particular occasion when he had ordered three replacement cards in one day (18 March), he had been attempting to place an order online, using his new card details. But each transaction failed, displaying a message indicating there was an issue with his payment method. Minutes prior to the card failure, he had requested a new card and assumed his card cancellation had not been successfully processed.*
- *He repeated the process twice, and on the third attempt, the transaction was successful and a text message stating a new card was on the way was received.*
- *When a cancellation is processed, Barclays sends an automated text message confirming the cancellation. And since he had not received this text confirmation and the merchant advised that there was an issue with the card, he'd assumed that the initial two card cancellations had not been successfully completed.*

The Investigator thought about this and highlighted Cifas' guidance which expects firms to contact customers so that they can explain the activity on the account. But she couldn't see Barclays had done that here. She considered this and the information Mr S had provided, which included a note in relation to the filing:

"Mr S may be requesting new cards to benefit from refunds from a merchant, using different card details, but this was just an observation"

The investigator didn't think Barclays had met the standard of proof for recording the marker.

She recommended it remove the marker and pay £200 for the trouble and upset caused. Mr S was pleased with the outcome on the marker but said he'd also lost some income, because of what had happened.

Barclays didn't accept the Investigator's conclusions. In summary, it said:

- *Mr S had ordered twelve new cards between 3 December 2023 and 21 February 2024.*
- *The majority of the transactions over this period had been made to a particular merchant and Mr S had received a lot of refunds from them.*
- *On 18 March he had ordered three cards. However, the first one wouldn't have been dispatched or arrived before he reported it as lost/stolen/damaged.*
- *It had provided evidence to show that Mr S had viewed the front and back of the card using his Barclays Mobile Banking (BMB) app before reporting it as lost/stolen again.*
- *The card details had to have been viewed in the app before Mr S registered the card details with the merchant and a purchases being made.*
- *Only one device was registered for BMB.*
- *Mr S had ordered a significant number of cards.*
- *On 26 February it had issued two months' notice to close the account, but Mr S had then ordered ten more cards after this. In the circumstances, it considered the marker for reporting false loss had been applied correctly.*

When this matter couldn't be resolved, the case was put forward for a decision from an Ombudsman. This is in line with our process.

What I've provisionally 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.

I can see that extensive submissions have been provided by the parties. I have read and considered them all. But I will focus on what I consider are the key issues.

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. It has provided clear evidence that multiple replacement cards were being requested on Mr S'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, before the further replacements were ordered. Barclays has also noted a number of transactions predominantly to a particular merchant, around when the card details were changed and from which Mr S received refunds.

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 S 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 S 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 S hadn't been a victim of fraud or somehow duped into requesting more cards.

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 suggested Mr S may be making a gain from the merchant it referred to – it's pointed to the refunds, stating that between 3 December 2023 and 21 February 2024 when Mr S ordered twelve cards, he'd spent £944 at the merchant but had £458 refunded back. It may have a point on this but there is a loss here – Barclays has lost out on the costs associated with producing and posting a new card. I think the argument Barclays is making here is that Mr S 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 S 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 fell short here in loading the marker without speaking to him. Had it done so, I think it's likely Mr S would have provided the explanation he gave our Service. But I'm afraid this isn't the end of the matter. As, I need to consider whether, in light of this evidence, the marker should now be removed.

I've thought carefully about Mr S's testimony. He's explained why he ended up ordering three cards in one day and he's questioned the bank's internal notes about this. But overall, I don't find his testimony persuasive when looking at what else happened as well. And I must stress that I'm required to have regard for all of the circumstances to decide what's fair and reasonable in the circumstances. I've reviewed the card servicing report, and I think it is highly unlikely that Mr S personally lost or had the details compromised of a number of cards which meant he'd need to order twelve new cards in the space of 80 days. 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. I'll say more about this below.

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. A number of cards were issued to Mr S. 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 bank's records show that over 30 cards have been reported and requested over the course of two years. The card servicing report also shows that Mr S then reported the loss of around another ten cards after Barclays told him it would be closing his account shortly. There's no reasonable explanation why he would need to do that. And I do think this adds weight to Barclays's suggestion the account was being used for the purpose of misusing the replacement card facility. Which in turn indicates Mr S 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 also note the terms and conditions of the account allow for Barclays to close the account immediately where there is fraud and so for completeness, I'm also satisfied the closure of this account was fair.

My provisional decision

My provisional decision is that I don't uphold this complaint.

Responses

Barclays responded to say that it accepted my provisional decision. Mr S responded to say that he didn't and wanted the outcome considered in light of new information. He said he'd sought legal advice since, and he'd been advised to share information he'd previously omitted, because at the time he'd not considered it relevant as it related to his personal life and work.

He said, his personal details had been leaked by his employer and because of the work he was involved in, he was subjected to threats, identity fraud attempts, multiple SIM swap attacks aimed at compromising his phone number and personal accounts.

He explained he had to implement long-term security measures in different areas of his life. One of these was frequent card replacements whenever one was briefly lost, assumed stolen or he suspected his bank details had been compromised. This is why he'd requested the number of cards he had. And it wasn't just over two years as represented by the bank, but over five years, with the practice beginning after the data breach. He said he'd paid fees for expedited delivery of cards, contradicting the bank's claim that he was seeking new cards for personal gain. He submitted again what he'd said about the occasion he'd ordered three cards in one day. Mr S provided some further information, which amongst other things included, screen shots of messages he'd received from third parties, communications between him and his employer about his details being leaked, and an email from Action Fraud relating to SIM swap fraud.

We passed this information onto Barclays to see if this changed its position. It said that it didn't because the explanation didn't sit comfortably with it. It highlighted Mr S had never changed his account or banks, which was odd if the situation was this serious. It added that changing a card alone wasn't an effective security measure.

I'm now ready to issue my 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.

I may not comment on everything, but I have read and considered everything that has been provided.

Mr S has submitted further information he believes explains his concerns about being a victim of attacks and the actual/potential compromise of his account and the actions he took. I've shared this with the bank, but its position is unchanged. I've fully considered what Mr S has said and provided but I haven't found his submissions offer persuasive evidence of a correlation between the incident he's referenced and the account activity. I've also noted what Mr S has said about paying for the delivery of cards but the cost to the bank of producing a card isn't just limited to that.

I'm afraid having weighed everything, I'm not changing my provisional findings and therefore I adopt them as part of this final decision. In conclusion, I don't find Barclays made a mistake in taking the steps it did. It follows that I won't be requiring it to take any action to resolve the complaint.

This completes our review.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 June 2025.

Sarita Taylor
Ombudsman