

complaint

Mr C complains that Barclays Bank UK PLC has registered a marker against him at CIFAS, the national fraud database, which is affecting his ability to open another bank account.

background

Mr C reported his Barclays debit card missing on 20 August 2017. Barclays wrote to him on 31 August 2017 to tell him his account was going to be closed the next day. In July 2018 Mr C contacted Barclays when his account at another bank was closed and found out that this seemed to be because of the CIFAS marker Barclays had registered. He then disputed transactions on his account made on 18 August 2017. There was a credit of £2,500 and then cash withdrawals and payments using his card.

Barclays said that the money paid into the account was obtained fraudulently. All this money had been withdrawn including one cash withdrawal of £2,000 which would have needed not only Mr C's card and PIN but also his date of birth. Mr C hadn't explained how his personal information had been obtained by a third party. It said it wouldn't remove the marker.

Our investigator didn't recommend that the complaint be upheld. Mr C had explained to him that he had been visiting family in North London and had lost his card. He said he hadn't returned to his home in Kent until the day after the transactions. He thinks he lost his card in a shopping centre and said that his PIN was in his wallet and was the same for both his Barclays card and that for the card with the other financial business.

Our investigator said that:

- Mr C had given inconsistent information about what happened as the other financial business had shown that there had been a cash withdrawal from his account with it at 13:48 on 18 August 2017 in Kent. The first disputed withdrawal was made in North London at 14:48 on that day.
- Neither Barclays nor the other bank had a record of Mr C changing his PIN.
- It was unlikely that only the Barclays card had been lost from his wallet as he hadn't used this.
- Barclays had shown that there had been access to Mr C's account using 'touch' ID on mobile banking at that time. This meant that Mr C would have seen the transactions on the account.
- He concluded that Mr C had likely given his card and personal details to someone else and knew about and authorised the withdrawals.
- Barclays had satisfied the criteria required to register a marker at CIFAS.

Mr C didn't agree. He said that this was now over two years ago and he couldn't remember exactly what happened. He thought he might have lost his card more than a day before the disputed transactions. And he didn't realise what had happened until after he'd returned to Kent. He didn't understand the relevance of withdrawals being made in both Kent with his other bank card and North London with his Barclays debit card on the same day. He didn't think that Barclays' systems were secure if money could be withdrawn with so little personal information. And he hadn't been prosecuted for fraud.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I need to take into account the Payment Services Regulations 2009 in considering this complaint. These state that a payment can only be authorised if it was consented to. So it's not enough for it to be authenticated, say with a card and PIN. And if the payments weren't authorised Mr C wouldn't generally be responsible for them.

I also need to consider whether the report to CIFAS was made fairly. On this point, Barclays needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

were the transactions authorised?

Barclays has provided evidence to show that the credit of £2,500 was reported as fraudulent by the sender's bank. A total amount equivalent to this credit was withdrawn in cash from Mr C's account that day. An amount of £2,000 was taken from an 'ASD' machine which would have required the genuine card, PIN and Mr C's date of birth. The other withdrawals were made from cash machines which would have needed the card and PIN. I'm satisfied that these payments were authenticated. His card was further used for purchases including for petrol paid for 'at pump' and again I'm satisfied that these payments were authenticated.

The question I need to consider is whether Mr C consented to these payments. I appreciate that his recall now of what happened at that time may not be complete. But any inconsistencies in what he's said during the course of his complaint are relevant in thinking about his credibility and deciding what is most likely.

What I think is important and hasn't been disputed by him is that there was access to his account through mobile banking during this period using the phone number he'd registered. And some of the log-ons were made using touch finger print identification. If Mr C had lost his card as he says that I think that it would be a natural reaction for him to find out whether any payments had been made from his account. I've seen clear evidence his account was accessed in this way on 18, 19 and 21 August 2017 and also on subsequent dates. I'm afraid I can't accept that Mr C wouldn't have then looked for and seen what he says were disputed entries to his account. There's no good explanation why he wouldn't have and didn't report them at that time.

There are some inconsistencies in what he's said. Barclays noted that he told it he didn't think he had kept his PIN with his card. He's told our investigator that he did. Mr C said the PINs on both cards were the same. Neither Barclays nor the other bank has a record of him changing his PIN – although Barclays cannot be clear that its records go back as far as when his account was opened in 2011. He told our investigator during a telephone call on 20 June 2019 that he didn't return to Kent until the day after the disputed transactions. He now seems to be saying that he was in Kent on that day.

Our investigator has already pointed out that there was a withdrawal at 13:48 on 18 August 2017 from a cash point in Kent and I note this was for £10. The credit of £2,500 was made to his Barclays account at 14:35 by faster payment. And the withdrawal from the ASD was made at 14:48. The distance between those locations for the withdrawals as far as I can determine is well over 80 miles. There was clearly no way in which Mr C could have made both of those withdrawals himself. And I can't say with certainty whether he made either of these personally.

I agree with our investigator that his explanation that only his Barclays card was somehow taken from his wallet together with the PIN without him realising to be unlikely. And that Barclays card had been last used before then on 1 August 2017 so there was no way someone could have seen his PIN being entered. And if the card had got into the hands of an unknown third party then I don't see how Mr C's date of birth would have been discovered. It also seems unlikely to me that someone in possession of a card and PIN wouldn't have checked for any balance on the account before then deciding to use the account for fraud. And there's no indication anyone close to him could have carried all this out and Mr C doesn't say that this could have happened.

Having balanced all the evidence I find it most likely that the withdrawals from the Barclays account were either made by Mr C or someone acting with his authority having been given his card and security information. So I find the withdrawals to be authorised.

the CIFAS marker

Barclays says that it applied the CIFAS marker because Mr C received fraudulent funds into his account. So I've looked at whether Barclays was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Barclays needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr C's account of events and the evidence Barclays has provided, I'm satisfied that Barclays had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr C received fraudulent funds into his account and didn't report this to Barclays at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Barclays had grounds to believe that Mr C had used fraudulently obtained funds based on the evidence it had.

It's a matter for the relevant authorities to decide whether to make a criminal prosecution. I'm only looking here at what Barclays did and I'm afraid I don't have a basis to require it to remove the CIFAS marker. I understand the difficulties this will likely continue to cause Mr C when he tries to open an account elsewhere.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2020.

Michael Crewe
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