

complaint

Mr D complains that Barclays Bank UK PLC has reported information about him to CIFAS, the UK's fraud alert service, and that the bank closed his account. He thinks this is unfair.

background

Mr D held an account with Barclays. On 22 April 2017, his account was credited with £2,000 through a bank transfer. Immediately afterwards nearly all the money was withdrawn; most of it at an Assisted Service Device machine (ASD) at a Barclays branch and at cash machines. There was also a card payment.

On the day of the disputed withdrawals (afterwards), someone contacted the bank to report they had found Mr D's card so the bank placed a stop on it. Mr D says he only discovered the payments after receiving a text from Barclays telling him his available balance was in excess of £2,000. Mr D says he called the bank right away but by this point all the money had been taken by someone purporting to be him.

Shortly afterwards, the payment into the account was identified as fraudulent – the holder of the account from which it had been made hadn't authorised it. Following a review, Barclays decided to close Mr D's account with immediate effect and wrote to tell him. Barclays says it took this decision based on a report from the other bank that the payment to Mr D's account had been made fraudulently, and the fact that the money was withdrawn from his account using his card and PIN. They didn't feel there was any plausible explanation for how a third party could have got hold of the PIN.

Barclays closed the account and placed a CIFAS marker against Mr D's name. Mr D complained, saying he knew nothing about the payment into his account or the withdrawals from it – he didn't think Barclays had treated him fairly.

One of our adjudicators looked at the complaint. Ultimately, they along with one of our investigators thought that Barclays had acted fairly. Mr D didn't agree and asked that an ombudsman review the case. He told us about the difficulties he has had in opening a new account and the impact this has had on him. He said he'd lost his card before the disputed withdrawals took place and that whoever found it must have got his PIN. He says he kept his card with his travel card in a travel wallet which was in his bag and he believes the card most likely fell out when he used his travel card.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've concluded Barclays hasn't treated Mr D unfairly. I realise Mr D will be disappointed by this, but I'll explain why.

Payments

It's common ground that the money paid into the account didn't belong to Mr D. The transfer wasn't authorised by the account holder and so the payment was the proceeds of fraudulent activity. The money was withdrawn immediately after it was deposited. So I've reviewed the available evidence to see how that happened.

Mr D says he knew nothing about the payment made to his account or the subsequent withdrawals. In order to withdraw the money, Mr D's card and PIN were used. I've considered the various possibilities as to how someone could have done this without Mr D's knowledge or consent.

Mr D told us that he thinks he could have lost his card, possibly while using his travel card. So it's possible whoever withdrew the money had found his card. But that doesn't explain how someone finding the card also knew Mr D's PIN. In my view, it's highly unlikely someone could have correctly guessed the PIN from the number of different combinations that are available.

We asked Mr D how his PIN could have become known, including whether he'd ever kept a written record of his PIN. Mr D said he kept a written notification of his PIN in his bedroom but that nobody went there. He also said that apart from him, only his mum knew his PIN.

There's no suggestion Mr D's mum passed on his PIN details or that their property was broken into. Based on what Mr D has said, I don't see how I could properly conclude the PIN was obtained from the written record he says he kept, or that the card was taken from his home.

Another possibility is that Mr D's PIN became known to someone else who saw him entering his PIN while using the card. It seems unlikely that Mr D would then have been so unfortunate as to lose his card and have it found by the person who saw him using it. The more logical explanation is that if Mr D was observed entering his PIN, whoever watched him must have stolen his card rather than simply finding it.

Mr D last used his card with his PIN some four weeks before the disputed withdrawals. Mr D told us that he was alone when he made this transaction. Of course, he might be mistaken in this belief, and this might be how his PIN became known. But even if he is, it doesn't seem likely that someone with whom he had no connection, that had seen him entering his PIN – either on that occasion or before – would later have been in a position to take the card.

Mr D hasn't given a consistent account of when he thinks his card could have gone missing. I've seen the bank's notes from April 2017 and early on in its investigation he said he believed his card went missing the day before the disputed withdrawals began but he's also suggested it could have been sometime before that. I've looked at both these possibilities.

If the card had been taken a day before the disputed withdrawals, it makes the possibility of the perpetrator being someone who'd simply seen Mr D entering his PIN some weeks before much less likely. The fraud that was carried out here required receiving account details, access to Mr D's card and knowledge of his PIN.

Could Mr D's card have been taken without his knowledge closer to the point he last entered his PIN? That would be a more plausible explanation as to how the withdrawals could be made by someone with no connection to Mr D. But there was then a significant delay between the card being taken and being used. An unacquainted fraudster would be relying on Mr D not realising his card was missing for a number of weeks before they carried out the fraud. In waiting, the fraudster would run the risk of Mr D blocking his card, thereby rendering the theft redundant.

Also, if his card was kept in the wallet - inside his bag - I don't see how someone could have taken it without Mr D noticing. Neither the bag, travel card or travel wallet went missing.

I've noted what Mr D has said about the fact that he wasn't using the account and that's why he didn't spot his card was missing. But his account was accessed through his mobile banking in the days leading up to when the fraudulent funds were paid in (even though there was only a nominal balance on it). Mr D hasn't suggested his mobile or online banking details were compromised – he says they were safe at home. The logical inference I draw from this is that this was either Mr D checking his account – which seems odd if he wasn't using it – or someone doing so with his permission.

The other possibility is that Mr D allowed a third party to use his account, card and PIN, and that was how the money was deposited and then withdrawn. Having considered the possible explanations for what happened, I conclude this is the most plausible explanation based on the available evidence, and so is most likely what happened here.

Mr D has questioned the availability of CCTV coverage of the withdrawals and the payment. The extent to which that might be helpful – if available – is open to debate. If it showed Mr D making the withdrawals, it would be conclusive. But if it showed someone other than Mr D using his card and PIN, it wouldn't enable me to exclude the possibility Mr D had allowed them to do so.

Account closure

I've thought about whether Barclays treated Mr D unfairly in closing his account. But I don't think it did. The terms and conditions allowed Barclays to end its relationship in the circumstances at play here. I know that Mr D wanted to understand why his account had been closed and I'm satisfied he now does.

CIFAS marker

Barclays applied the CIFAS marker because it said it believed Mr D had misused the account facility. I've looked at whether it was fair for it to do that. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. Effectively, 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 D's account of events and the evidence I think there would have been grounds to report the events here to the police to investigate, and that Barclays wasn't unreasonable in placing a CIFAS marker against Mr D's name.

my final decision

My final decision is that I don't require Barclays Bank UK PLC to do anything further to resolve Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 April 2020.

Sarita Taylor
ombudsman