

Complaint

Mr S has complained that Barclays Bank UK PLC recalled payments made to his personal accounts and registered a CIFAS marker against him.

Background

Mr S was the director of a limited company, PLBH Ltd. The company held an account with Barclays.

In November 2018, Mr S made three payments, totalling £17,500, from the company's account to his personal account with Barclays. He then transferred this sum to an account with another bank. He also made two transfers of £5,000 to two employees.

Barclays contacted the receiving banks and recalled the payments. Mr S's other bank told him Barclays said the payments were fraudulent.

As Mr S couldn't get access to the £17,500, he transferred a further £10,000 and £7,500 to his other bank accounts. Barclays also recalled these payments.

At the start of November 2018, PLBH's account was overdrawn by £29,558.50. By the end of November 2018, it was £74,878.50 overdrawn. Barclays used the returned payments to offset the overdraft. It carried out a review of Mr S's account and decided to close it.

Mr S complained to Barclays. He said it had wrongly accused him of fraud. He asked Barclays to return the payments to his personal account.

Barclays refused to refund him. In its final response letter, it conceded that the payment to one of the employees was not fraudulent. However, it stuck by its decision to close his account. As it had given him short notice to close, it paid him £250 compensation.

Subsequently, Barclays registered a CIFAS marker against his name for misuse of facility.

Mr S wasn't happy with this outcome, so he brought his complaint to this service. He wants the CIFAS marker removed and his money returned to him.

An investigator looked into his complaint and decided not to uphold it. She said:

- PLBH's account was overdrawn. It couldn't fund the transfers, which he made in November 2018, and the money wasn't his to use.
- Some of the funds were recovered and returned to the business account. So, there was no financial loss.
- As PLBH is no longer trading, this service cannot investigate whether the payments were fraudulent or not.

Mr S disagreed with the investigator's view. He has asked for an ombudsman's final decision.

My findings

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

The bar for recording a CIFAS marker is a high one. The bank must have a good reason to believe it could have suffered a loss and/or it reasonably believes it has grounds to press criminal charges as a result of the activity on the account. This should be more than just a suspicion or concern.

It follows that the bank must have carried out sufficient checks to satisfy this requirement. Given the impact a CIFAS marker can have on someone, the bank is expected to keep a record of these checks so it can evidence the decision it reached to record the CIFAS marker.

In this case, PLBH had a substantial overdraft of £29,558 at the time the payments were made. Barclays said this was an unarranged overdraft and that it told PLBH it didn't have any funds to meet its expenses. Despite this, PLBH continued to make payments, which took the overdraft to £74,878.50.

Mr S disagrees. He said he had an arrangement with Barclays and it conceded that he hadn't acted fraudulently, albeit in respect of one transaction. However, the overdraft was substantial. Barclays closed the account and I understand it has written off the debt. So, it has suffered a loss. I've also seen the bank's notes for the PLBH account. They show that, in January 2018, the company agreed to a repayment plan and Barclays placed restrictions on the account. This throws into doubt Mr S's claim that he was spending against an arranged overdraft.

Given these facts, I'm afraid I don't think it would be fair and reasonable to ask Barclays to remove the CIFAS marker. Similarly, I think it was fair and reasonable for Barclays to offset the debt owing to it with the returned payments so I won't be asking Barclays to refund Mr S.

I am sorry this isn't the outcome Mr S was hoping for. I understand Mr S is taking legal advice. He is still free to take his complaint to court should he wish to do so.

My final decision

My final decision is that I'm not upholding 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 2020.

Razia Karim
ombudsman