

## **complaint**

Miss S complains that Barclays Bank UK PLC closed her account and registered a fraud prevention marker against her without due cause.

## **background**

On 2 October 2016 a payment of £3000 entered Miss S's account. There were then a series of cash withdrawals from Assisted Service Device (ASD) and ATM, an online transfer and card payments in two supermarkets which removed almost the entirety of these funds between 2-3 October 2016.

Barclays received information from the sending bank that these were fraudulent funds, so they restricted and reviewed Miss S's account. Once they had completed their review they took the decision to close the account with immediate effect and referred her details to Cifas who registered her details on the national fraud prevention database. They explained this was because they were satisfied that the funds which came into her account were fraudulent funds; and they thought it was most likely she was party to the activity on her account because:

- The fraudulent funds were utilised through her genuine card and PIN; and
- Some of the funds were withdrawn through an ASD which is a machine that allows for higher value cash withdrawals than an ATM but would require her date of birth as well as her card and PIN.

Miss S told us that she didn't know about any of this activity on her account until she received her monthly statement. She explained that at the time the transactions took place she would have been in school, and that she had never been to the town where the transactions took place. She said she reported it to Barclays when she saw it but that they told her they had already closed her account.

She explained that she had previously lost her card and ordered a replacement which she received. She said about three or four weeks prior to the disputed activity on her account she lost the replacement card too. She said she didn't tell anyone as she was worried that she would get in trouble with her parents. She told us that she hadn't shared her PIN with anyone or written it down. She said it may have been the same as the code she used to unlock her phone, but that no one knew that either. Miss S explained that she didn't have any kind of ID on her when her card went missing, but that she may have had her date of birth recorded on her school work that she would have carried with her. She wasn't aware of anything going missing other than her bank card. Miss S said no one had asked to use her account.

Miss S complained to our service. Our investigator reviewed her complaint and didn't recommend that Barclays needed to do anything. He felt on the evidence available that it was most likely that Miss S had given her card and PIN to a third party who had then made the disputed transactions and as such he felt there was enough evidence that Miss S should remain on the Cifas register. Miss S didn't agree with our investigator's recommendation, so it has come to me to decide.

## **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, my review of the

evidence has led me to the same overall conclusions as the investigator previously set out and for much the same reasons. I'll explain why.

The marker that Barclays asked to be applied is for misuse of facility. The misuse relates to using the account to receive fraudulent funds. For Barclays to record this they don't need to be able to prove beyond reasonable doubt that Miss S is guilty of an offence. But in order to register a Cifas marker, they are expected to be able to demonstrate that there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted. They must also be able to show that the evidence they've based this on is clear, relevant and rigorous such that it could confidently report the conduct of Miss S to the police – though this doesn't mean that they must make such a report.

The alleged fraud or financial crime here relates to Miss S allowing her account to be used to receive and utilise the fraudulent funds. The relevant finding for me to make is not specifically what I conclude was most likely to have been Miss S's intentions and actions in relation to the funds. Rather, my role is to determine what I think Barclays were entitled to think about what had most likely gone on, such that it would be able to escalate its concerns to Cifas based on the available evidence.

I do think that on balance Barclays were entitled to do so. I'll explain why. It is not in dispute that the funds that entered Miss S's account were fraudulent and she didn't have any legitimate reason to receive these into her account. So, I have carefully considered whether Barclays could conclude she was deliberately dishonest in the receipt and utilisation of these funds. This does not mean they need to have concluded that she physically made the transactions herself, it could be enough for her to allow someone else to use her account for dishonest purposes. Having reviewed the evidence, I think it was fair for Barclays to conclude she authorised these transactions on her account, this is because:

- I understand that Miss S was most likely at school when some of the disputed transactions took place, as the second day of transactions was a Monday and the transactions took place in the morning. The first day was a Sunday so she would not have been at school and could have completed these. So I have considered whether I think it was likely that someone known or unknown to her made some or all of the payments without her consent.
- I accept that the payment could have been made into the account using details available on the card that Miss S said was lost or stolen. Miss S said that she had lost her card several weeks prior to the fraudulent payment entering the account, and the transactions which utilised these funds took place. So I have considered whether I think it is likely that an unknown third party obtained Miss S's card without her consent. I think it would be unusual for an unknown third party to obtain Miss S's card and then wait weeks to use it as there would be a strong possibility that Miss S could have cancelled the card and thus prevented them from accessing the £3000. They would have no way of knowing whether the card was still active. So I don't think it is most likely that the card was taken by an unknown third party.
- I've considered whether it could have been taken by someone known to Miss S, but without her knowing or consenting. But if this was the case, I still think it would have been risky to wait so long to use the account as they would have relied on Miss S telling them if she had reported the card lost or stolen. In this scenario, there would be a significant risk that the £3000 would have been sent to the account and not been accessible.
- Even if I were to accept that an unknown third party had been responsible for obtaining Miss S's card, there does not appear to be a clear point of compromise for

her PIN. With regards to Miss S's PIN code, she originally told us that her PIN was not recorded anywhere or known by anyone else. She explained that it may have been the same as the PIN to enter her phone but said this had not been disclosed to anyone else either. Her last genuine transaction was over two months before the fraudulent credit was paid into her account so I don't think it is likely someone could have observed her entering her PIN. This leads me to conclude it is most likely that the person using the card would have had to know the PIN due to Miss S disclosing it to them.

- In response to our investigator's view of the case, Miss S did say her PIN could have been recorded somewhere. However, an unknown third party would not have known that she had practically no funds in the account so it seems unusual that there were no attempts to withdraw money from her account. This also would still leave the question as to why they waited so long to use her account too.
- The person who withdrew the cash from the ASD would have needed to know Miss S's date of birth, as well as having her card and PIN. Miss S explained that it could have been recorded on some school work, but didn't think anything else had gone missing from her school bag. Whilst I accept that someone could have accessed her belongings and taken note of her date of birth, I don't think this is the most likely scenario here. I say this because Miss S herself didn't seem to be certain that she had her date of birth recorded anywhere, and if she did she hadn't noticed whatever it could have been written on going missing.
- Further, whilst I appreciate Miss S may have been nervous to tell her parents that she had lost another bank card, I am unclear why this would have prevented her from getting in touch with Barclays in this period.
- I have also considered that Miss S said she reported the disputed activity after receiving her statement which I can see was dated 17 October. She said after receiving her statement she spoke to Barclays and they said her account was closed – but this didn't happen until 28 November. Whilst this inconsistency isn't conclusive, it provides another inconsistency in Miss S's story that Barclays would have considered.

So when considering all of this I think it was reasonable for Barclays to refer Miss S to Cifas. This is because I can understand that for Barclays to believe Miss S had not allowed her to use her account for this activity, an unknown third party would have had to find or steal her card, take note of her date of birth that may or may not have been recorded on some school work, and then correctly guess her PIN. They would also have to be satisfied that Miss S wouldn't notice her card was missing for all that time, as if she had she could have reported it lost or stolen and prevented the unknown third party from accessing the fraudulent funds. Given the unlikelihood of this sequence of events, I think it was reasonable for Barclays to conclude that Miss S either completed these payments or gave someone else consent to do so, and as such it was correct for them to escalate their concerns to Cifas.

I've also considered whether Barclays acted fairly in closing Miss S's account with immediate effect. Miss S said she didn't receive the letter to notify her of the closure. Barclays could not show that it had been sent but did provide a date stamped copy of the letter so I think on balance it was most likely sent. I think Barclays acted reasonably in closing the account with immediate effect due to the fact I think it was most likely Miss S allowed her account to be used to receive and utilise fraudulent funds. This is in line with their terms and conditions.

**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 Miss S to accept or reject my decision before 12 November 2020.

Katherine Jones  
**ombudsman**