

Complaint

Mr O1 has complained that Barclays Bank UK Plc closed his accounts and registered a CIFAS marker against his name.

Mr O2, his father, represents him.

Background

Mr O1 says he can't open any banks accounts because Barclays has registered a fraud marker against his name. He wants Barclays to remove it.

Mr O1 had two accounts with Barclays.

Between 23 February 2017 and 6 March 2017, Mr O1's current account received three credits, totalling £31,826.81. The money came from the accounts of customers at other banks who had been scammed. Barclays returned most of the money to the sending banks but approximately £4,700 had been withdrawn from Mr O1's account.

Around the same time, two additional accounts were opened online with Barclays in Mr O1's name.

Barclays carried out an investigation and decided to close Mr O1's account. It subsequently registered a CIFAS marker against his name.

Mr O1 complained to Barclays about the CIFAS marker. At the time, he believed Barclays thought he'd opened the two additional accounts fraudulently and that was why it had registered a CIFAS marker. He told Barclays he'd been the victim of identity fraud and that it wasn't him who opened the new accounts.

He said Midland Trains tried to prosecute him for travelling without a ticket to Leicester, a city he'd never visited. It transpired it was a case of mistaken identity. The offender was able to supply his name, postcode and accurate date of birth but didn't spell his name correctly. Mr O1 said all charges were unconditionally withdrawn.

He believed the same person was using his identity and had opened the two accounts.

He asked Barclays to remove the CIFAS marker.

Barclays decided not to remove the marker. It said it had registered the marker because his account had received monies fraudulently and not because someone had opened the two additional accounts. Also, some of the fraudulent funds had been withdrawn from his account at ATMs and ASD machines using his debit card and PIN. Funds were also transferred to other accounts using an ASD machine and Mr O1's mobile banking app.

Mr O1 wasn't happy with Barclays' decision so he brought his complaint to this service. He told this service he'd reported his card lost. Barclays ordered a replacement card, which he said was posted to his home address. He said he didn't receive it and he was living away at university. He confirmed that he hadn't shared his PIN with anyone else.

An investigator looked into his case but he didn't uphold the complaint. He concluded that Barclays were entitled to register the CIFAS marker because of the fraudulent activities on his account. And he was persuaded it was more likely than not that Mr O1 authorised the

withdrawals and transfers because there was no point of compromise for the debit card, PIN and mobile banking app or phone.

Mr O1 and Mr O2 disagreed with the investigator's view.

They have asked for an ombudsman's final decision. They want to see the CCTV footage from the cash machines and they have questioned the reliability of the bank's evidence.

My findings

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The investigator wrote a detailed view that sets out in full the facts, the transactions, the relevant regulations and the evidence. Both Mr O1, Mr O2 and Barclays have read the investigator's view, so I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mr O1 and Mr O2 that I've read the file, including their comments and evidence.

Having done so, my review of the evidence has led me to the same overall conclusions as those reached by the investigator and for broadly the same reasons.

Barclays registered a CIFAS marker against Mr O1's name because monies from fraudulent activities were paid into his account and some of it was withdrawn. I think it's highly unlikely a random third party did this. Whoever transferred that money into Mr O1's account knew they could remove it, otherwise there was no benefit to using his account. And it's not clear how a random stranger would even know the account details.

So I do need to consider whether Mr O1 authorised the withdrawals and transfers, either by making them himself, or by allowing someone else to use his account. Then, I can consider whether Barclays was entitled to register the CIFAS marker.

The money was removed from the account by ATM and ASD cash withdrawals, a cash withdrawal in branch, a bill payment at an ASD machine and by a transfer to another account via the mobile banking app.

Unfortunately, the electronic audit report for the card transactions no longer exists. Barclays says it only keeps this report for a limited period. However, I'm satisfied the genuine card and PIN were used in order for the cash withdrawals and bill payment to take place. It's common knowledge that the ATM and ASD transactions simply couldn't have happened without the card and PIN. Also, Barclays said the ASD transactions needed the user to input Mr O1's date of birth.

Similarly, the transfer was done through the mobile banking app. At the very least, Mr O1's mobile phone and his log in details would've been needed to make the transfers. In addition, Barclays said his card was needed to set up a new mandate.

I'm satisfied, therefore, that all the transactions were authenticated.

However, Mr O1 said he didn't make these transactions and the relevant regulations say that authentication is not, on its own, enough to enable Barclays to hold him responsible. So I also need to think about whether the evidence suggests that it's more likely than not that he consented to the transactions being made. And from what I've seen, I don't think it's unreasonable for Barclays to conclude that he did consent.

Debit card and PIN

Barclays said all the cash withdrawals and the ASD bill payment were made with a debit card, which was issued in branch on 23 February 2017 in Mr O1's university town, (which, incidentally, is about ninety minutes by public transport from his home address so not far away). I've seen a screen shot of the note made on Mr O1's records. It confirms the card was issued that day. Confusingly, it also shows it was despatched to his home address.

Mr O2 has questioned whether a local branch can issue a debit card on request. I've checked Barclays' website and the bank can issue temporary replacement cards in branch. I think this is what happened. Besides, the card was used on 23 February until 27 February, so it couldn't have been in the post during that period.

Barclays also explained that Mr O1's PIN was needed to get the replacement card. And it didn't issue a new PIN.

It's possible a third party, impersonating Mr O1, went into the branch and requested the card. But that person couldn't get it or use it without the PIN. Yet, Mr O1 maintains he didn't share his PIN with anyone else and didn't keep a written note of it. So, on his own admission, he is the only person who knew the PIN.

I note Mr O1 said he never received the card that was used to make the transactions. However, the bank's notes record that he visited a local branch on 10 March 2017, after being told his account was under review, and produced amongst other things, his bank card.

I'm afraid the only logical conclusion I can draw from this information is that Mr O1 collected that card.

Mobile app

A transfer was made to another account via Mr O1's mobile banking app and from his mobile phone on 24 February 2017.

The activity log for his mobile banking app shows that the transfer was made from a device, which he'd used since 13 January 2016 for genuine transactions. This device was registered to the same mobile number as the one he gave this service.

Mr O1 didn't mention losing his phone or lending it to someone else. He didn't say that he'd shared his log in details with anyone else. Again, there's no explanation for how a third party would have his phone or log in details without his consent.

Barclays said the debit card and PIN were also needed to set up the transfer, as the payee was new. And according to the bank's notes, Mr O1 had his debit card on 10 March 2017.

The same device was used to transfer £0.10 from one of the newly opened accounts to the current account.

I've also seen the login data for mobile banking during February 2017. There was an increase in activity on 23 February. There were 27 logins that day, which suggests he was expecting something to happen. And there were multiple logins through to the 28th, indicating he was still in control of the account.

Taking everything into account, I consider it's more likely than not that Mr O1 authorised the transactions. He might not have made them himself. I think it's equally possible he allowed someone else to use his account. Indeed the £0.10 transfer looks like a test, which a third party might do. However, he must have been complicit with what happened because of the level of information, which the third party had and which they could only have got from him. And I'm afraid Mr O1 is treated as having consented to the transactions if he allowed someone else to use his account.

Now I have to consider if Barclays were entitled to register the CIFAS marker.

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.

Based on the evidence I consider it was reasonable for Barclays to believe it had grounds for pressing criminal charges as a result of the activity on Mr O1's account. I think the CIFAS maker should remain.

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 O1 to accept or reject my decision before 23 July 2020.

Razia Karim
ombudsman