

## **complaint**

Miss B complained because Barclays Bank UK PLC closed her account, and recorded fraud markers against her name.

## **background**

Miss B said that on 23 July 2018 she had a call from someone she thought was from Barclays. The caller asked for a number of Miss B's security details, including her full name, date of birth, address, and "PINsentry" number. Miss B provided all these details. Five minutes later Miss B rang Barclays to ask about the call. Barclays hadn't made the call, and re-set her account.

On 3 September, Miss B said she was out shopping. She took out £50 cash and made a contactless payment for £5.61. Miss B said her card was stolen, probably on the train, as her bag was open with no zip. She said she got home about 6pm.

The next day, Miss B rang Barclays to report her card had been stolen. But Barclays said her account was under an internal review, which meant it couldn't send her a new card.

On 19 September, Barclays sent a letter to Miss B. The letter said that following a review of her account, and after careful consideration, Barclays was unable to continue to act as Miss B's bankers. Her account would be closed that day, in line with the terms and conditions of her account.

Miss B complained. Barclays' final response letter said that closing her account had been carefully considered and was subject to strict internal review processes.

Miss B wasn't satisfied and complained to this service. She told our investigator that Barclays had told her there had been money laundering on her account. She hadn't been able to get another account, except with a credit union where she had to pay a monthly fee.

The investigator looked at the transactions on Miss B's account. There had been 25 fraudulent credits into Miss B's account on the afternoon of 3 September, totalling £2,438.65. Within a short time, there had then been withdrawals totalling £2,438. These were:

- a withdrawal for £300 at a cash machine. This had used the genuine card and correct PIN;
- a withdrawal for £2,000 at an machine inside a branch, where the limit is higher but needs additional security keyed in. This had used the genuine card, correct PIN, and Miss B's correct date of birth;
- a purchase for £129 at an IT store, using the genuine card and correct PIN;
- a contactless payment for £9.

The investigator said that Barclays had closed Miss B's account because of intelligence it had received that Miss B had received fraudulent money into her account, which she'd then spent. It had decided to close her account as a result, and had recorded fraud markers with the organisations CIFAS and Hunter.

The investigator considered what Miss B had said. But she didn't think it was likely that someone would have fraudulently obtained Miss B's date of birth in the July phone call, then waited two months before following Miss B shopping in September. And during that trip, the

person would have had to look over Miss B's shoulder during the morning cash withdrawal, in order to obtain her PIN, before following her for two hours before stealing the card. So the investigator concluded that Miss B had authorised the disputed transactions herself, or had consented to someone else using the account by providing her card, PIN, and date of birth.

The investigator also considered that Barclays was justified in putting fraud markers against Miss B's name with CIFAS and Hunter. She pointed out that banks doing this need sufficient evidence to back up what they're alleging, and a criminal offence must be identifiable. The investigator agreed this test had been met.

Miss B didn't accept this and sent a long and detailed email. In summary, she said that she, her mother and partner were disgusted at the way the whole situation had been handled. She said someone was out there walking freely after tarnishing her name and cloning her details, which wasn't fair. She said she'd had the worst childhood. Miss B said no-one was showing consideration towards her and no-one understands her pain. She said the system has no remorse or sympathy for people crying out for help, and she had been through so much. Miss B said she'll be putting in a full formal complaint "*where I will get everyone involved.*"

### **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 recognise that Miss B is angry that her account has been closed and fraud markers placed against her name. But my role is to look impartially at the evidence, within the framework of the relevant rules and regulations.

### *Regulations*

The relevant regulations for disputed transactions taking place in late 2018 are the Payment Services Regulations 2017. These say that the payment service provider (here, Barclays) must show the payment was authenticated. Miss B has claimed that her card was cloned. But there has never been an instance where the chip on any card has been successfully copied. A cloned card might be used in, say, a phone transaction where only the numbers are given out. But the computers within payment machines recognise whether the genuine card has been used. Here, Barclays has shown, by providing the relevant computer documentation, that Miss B's genuine card with its chip, and the correct PIN, were used. The larger cash withdrawal also used Miss B's correct date of birth. So the disputed payments were authenticated.

The regulations also say that it's necessary to look at whether the card holder authorised the payments. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if he did authorise them. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure.

### *Whether Miss B authorised the withdrawals*

I've considered whether it was Miss B herself who authorised the withdrawals on the afternoon of 3 September. Several balance enquiries were carried out that afternoon, with

the disputed withdrawals made immediately afterwards. I consider that whoever made the withdrawals must have known that fraudulent payments were expected into the account.

It's key that Miss B's genuine card, correct PIN, and correct date of birth were used. There were no incorrect PIN attempts. Miss B has said that her card was stolen, but that doesn't explain how a third party would know her correct PIN and her correct date of birth.

Miss B told our investigator that she hadn't had any identification including her date of birth with her that afternoon, but she'd given the July caller her date of birth. But I don't consider it's likely that a fraudster would obtain this information in July, then wait until September before paying fraudulent money into Miss B's account, following her to look over her shoulder to obtain her PIN, wait another two hours then steal the card. It doesn't make sense.

I consider the only reasonable conclusion is that Miss B carried out the balance enquiries and withdrawals herself, knowing that fraudulent money would be crediting the account. It's possible she may have given someone else her card, PIN, and date of birth. But if so, that still counts as Miss B giving consent to what happened.

#### *Fraud markers*

The information which Barclays received indicated that the credits totalling £2,438.65, which were paid into Miss B's account, were fraudulent funds. I've considered this, in the light of the guidance from the anti-fraud organisation CIFAS. This is a member organisation and Barclays belongs to it.

The CIFAS guidance explains members can only record information with CIFAS if this is supported by evidence and meets "four pillars" burden of proof. These are:

- that there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted;
- that the evidence must be clear, relevant and rigorous such that the member could confidently report the individual's conduct to the police;
- the individual's conduct must meet the criteria of one of the case types;
- In order to file the member must have rejected, withdrawn or terminated a product on the basis of Fraud, unless the member has an obligation to provide the product or the individual has already received the full benefit of the product.

So a bank can't apply a CIFAS marker because it suspects fraud. It needs to have sufficient evidence to back up what it's alleging and a criminal offence must be identifiable (so the bank could confidently report the consumer to the police). Banks are also expected to keep the evidence they rely on, for at least six years.

This is a high bar to recording a fraud marker. But on the evidence I've seen, I consider that Barclays was justified in recording the markers against Miss B's name, with the anti-fraud agencies CIFAS and Hunter.

#### *Closure of Miss B's account*

Banks are entitled to decide that they no longer want to provide banking services to customers – in the same way that customers can decide to close their accounts. But they can also close an account immediately, without giving any notice, under certain

circumstances. Barclays explained this in its 19 September 2018 letter to Miss B, when it closed her account. It quoted section 11 of its Banking Terms and Conditions. This section says:

*"We may end this agreement immediately...and stop providing services and close your account, if we reasonably believe you have seriously ... broken any terms of the agreement or we have reasonable grounds for thinking you have done any of the following things, which you must not do:*

*...*

*You commit or attempt fraud against us or someone else  
You use or allow someone else to use your account illegally or for criminal activity...  
You inappropriately let someone else use your account."*

As I have found that Barclays was entitled on the evidence to record fraud markers against Miss B's name, it follows that Barclays was also entitled to close Miss B's account without giving notice.

### **my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 4 June 2020.

Belinda Knight  
**ombudsman**