

complaint

Miss U has complained Barclays Bank UK PLC closed her accounts and placed a fraud marker on her record.

background

Miss U brought her complaint to the ombudsman service after Barclays had closed her accounts and lodged a CIFAS marker against her name. They told her they'd closed her accounts as she'd misused them. They believed she'd either transferred money out of the account after fraudulent payments had been made into it or she'd allowed someone else to use her account.

Barclays had noticed something was wrong when they'd received an alert from another bank. That customer had been a victim of fraud and £14,043.31 of their money had been sent to Miss U's account. Barclays had told Miss U she could access £184.95 left after the fraudulent transactions.

Miss U had been in touch with Barclays after she'd realised she was blocked from making a payment.

Miss U told us she'd allowed a friend to make a payment into her account and then had made payments out of her account on their behalf.

Our adjudicator felt overall the evidence pointed to Miss U knowing about or having authorised herself what happened. However she didn't think Miss U knew exactly why this was happening and she'd been duped. She didn't think it was right for Barclays to lodge the CIFAS marker as they'd not met the relevant tests. She asked them to remove the CIFAS marker and pay Miss U £250 for the distress caused.

Barclays disagreed with this outcome and asked an ombudsman to review this complaint.

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 reached roughly the same conclusion as our adjudicator. I have recently been in touch with Barclays to confirm this but they were unwilling to change their view. I'll now explain my thinking in my final decision.

disputed transactions

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing that would be specific to this type of case. So when we look at whether a bank has acted fairly in closing an account because of fraud, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to do anything different.

So to help me decide what happened, I've looked at the evidence of the transactions themselves, and what Miss U has told us.

Miss U told us a friend she'd known for a while had asked if they could transfer some money into her account. Then they'd asked her to transfer this out to two other accounts. As this was somebody she knew, she didn't ask where the money was coming from. As far as she knew she had no reason to distrust this friend. This person lived abroad and they didn't have a UK account so needed some help.

So there's no real dispute that Miss U knew about the money coming into her account and made three transfers out. I believe she also may have transferred £300 on 24 August – the day the fraudulent funds were paid in – to her Barclays' savings account. But she also sent £339.90 using a money transfer service to pay the remaining money from the fraudulent funds away. So I'm satisfied she didn't benefit from the fraudulent funds.

accounts closure

So that means as soon as Barclays were told money that Miss U had received had been sent fraudulently, they felt the evidence showed she knew what had happened. They therefore closed her accounts as their terms and conditions allow them to do if someone has misused their account. Although I can't see Barclays carried out a thorough investigation, I can see why they took the decision to close Miss U's accounts. In the light of what they thought they knew at the time, I don't think they did anything wrong.

CIFAS marker

The aspect concerning Miss U most is the CIFAS marker placed against her name on the fraud industry database. This marker will stay for six years and means that she will find it difficult to get another account allowing more than the most basic activity.

So I've looked at whether Barclays applied this fairly and in accordance with the best practice around applying these markers. A business can't apply a CIFAS marker because it simply suspects fraud. Barclays needs to have sufficient evidence to back up what it's alleging with there being an identifiable criminal offence. This means, if needs be, Barclays could have presented clear, relevant and rigorous evidence to report Miss U to the police.

Miss U shared with us copies of her WhatsApp messages with the friend who'd asked to pay money into her account. We then shared these with Barclays. Our adjudicator felt this demonstrated Miss U was duped. And I agree. I don't doubt she knew she was getting money into her account and authorised payments out. I'm less sure she'd have been willing to do this if she'd known the money was fraudulent. I don't believe these messages demonstrate Miss U knew what was going on nor was she complicit in a fraud.

I accept Miss U could have asked more questions at the time this all happened but I've not seen any evidence – presented by Barclays – which shows Miss U wasn't taken advantage of. I've also noted at the time Barclays made no attempt to get to the bottom of what had happened. We asked Miss U about these transactions and she was immediately upfront but I can't see Barclays did a similar investigation.

I've looked at the consequences of Miss U not being able to open a bank account. There's no doubt she's had to rely on friends and her parents to use other accounts so she had money whilst she was a student. And she's had to get employers to pay wages into other people's accounts. This has been going on for more than two years. I've also taken into account how embarrassing and difficult this must have been for her.

Barclays has known this service's view on this complaint for more than a year since our adjudicator first asked them whether they'd be prepared to accept the WhatsApp evidence. They've declined to accept what we think. They've recently shared with me what CIFAS has thought of this case.

Apparently CIFAS don't think the WhatsApp messages substantiate Miss U's innocence. As far as I'm aware CIFAS has not undertaken any investigation into what happened in this case, nor, unlike us, have they spoken to Miss U. Nor have I seen any test which says that a customer must demonstrate innocence.

I'm satisfied Barclays have lodged a CIFAS marker when they shouldn't. As they know I also believe – taking into account the impact on Miss U – compensation of £500 should be paid to Miss U.

my final decision

For the reasons I've given, my final decision is to instruct Barclays Bank UK PLC to:

- Remove the CIFAS marker from Miss U's record; and
- Pay her £500 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss U to accept or reject my decision before 20 January 2020.

Sandra Quinn
ombudsman