

## **complaint**

Mr Z complains that Barclays Bank UK PLC closed his account and registered a fraud prevention marker against him without due cause.

## **background**

Between 14 and 18 March 2018 a series of payments were made into Mr Z's account. This money was spent between 19 and 22 March. On 23 March Barclays received notification from one of the banks the original payments had come from, that the payments were made up of fraudulent funds. Barclays reviewed Mr Z's account and on 9 April they closed his account with immediate effect and escalated their concerns to Cifas to be registered on the national fraud database for misuse of facility.

Mr Z explained to this service that he had been used as an unwitting money mule. He was at university and a friend (who we'll call Mr A) asked if he could use his account to receive money from his parents as he didn't have one of his own. Mr Z said that at the time he was naïve to the fact these were fraudulent funds and was simply trying to help a friend. He said he had met Mr A at university as they had lived in the same university halls. Mr Z said he is no longer in contact with Mr A and has reported him to the relevant authorities.

Mr Z told us that he withdrew money and made transactions on Mr A's behalf after the money was received. He admits that he had some benefit of the funds as the spending included Mr Z accompanying Mr A on a trip to London for a few days. The transactions included a hire car, hotel costs, cash withdrawals, shopping, restaurants, bank transfers and other expenses. He said he didn't realise there was anything wrong with this, as he thought that the funds belonged to Mr A.

Mr Z complained to Barclays after his account was closed and the Cifas marker was loaded. They didn't agree they had done anything wrong, and felt that it was most likely Mr Z had conspired with Mr A with regards to the fraudulent funds so the account closure and Cifas marker were both completed correctly. They thought:

- if Mr Z had been targeted to launder money by a fraudster, Mr A would have likely asked him to transfer or withdraw the money quickly and give it to him; and
- it would be unusual for a fraudster to spend the funds with an innocent third party (Mr Z).

Mr Z wasn't happy so he complained to our service. Initially, an investigator recommended that the complaint be upheld as they didn't feel there was enough evidence to justify Barclays escalating their concerns to Cifas to register on the national fraud database. However, Mr Z's complaint was reviewed after we received further evidence from Barclays and the investigator recommended that it was not upheld. This was because the new evidence included information from the hire car company and Mr Z's university that meant she didn't think he had been an unwitting money mule, rather she thought it was most likely that Mr Z was aware the funds were fraudulent and willingly spent them.

Mr Z didn't agree. He maintained that he had been an unwitting money mule and as such his complaint 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 Mr Z is guilty of an offence. But 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 Mr Z to the police – though this doesn't mean that they must make such a report.

The alleged fraud or financial crime here relates to Mr Z's account being used to receive and utilise fraudulent funds. Though these actions alone would not be enough to register a Cifas marker against Mr Z. Barclays would also need to be satisfied that the evidence shows that Mr Z was deliberately dishonest in his actions, rather than merely unwitting as he is suggesting he was. The relevant finding for me to make, is not specifically what I conclude was most likely to have been Mr Z's intentions and actions in relation to the funds. Rather, my role is to determine whether I think Barclays were entitled escalate its concerns to Cifas based on the available evidence. I think, on balance, Barclays were entitled to do so. And I'll explain why.

It is not in dispute that the funds that entered Mr Z's account were fraudulent and he didn't have any legitimate reason to receive these into his account. It is also not in dispute that Mr Z did benefit from the utilisation of these funds. So, I have carefully considered whether Barclays could conclude he was deliberately dishonest in the receipt and utilisation of these funds and not an unwitting money mule. Having done so, I do think there is enough evidence to suggest that Barclays could reasonably conclude Mr Z had been deliberately dishonest.

Some of the money was spent on accommodation for the trip to London. After further questioning from our investigator, Mr Z explained that there had been a group of four of them staying in the accommodation – Mr Z, Mr A, Mr B (a friend of Mr Z's), and Mr C (a friend of Mr A's who met them in London). He explained that they originally booked the accommodation for two nights but ended up extending their trip by another two days. He explained this is why there were two transfers to Mr B – he had paid for the extra nights in the accommodation. Mr Z said that there were two payments as they had extended the stay twice by one night each time so there were two additional bookings. Mr Z explained that the group stayed in the same apartments for the four days, but were given a new room when they extended the booking.

I've reviewed evidence from the accommodation company. It showed that the initial booking was indeed made for four individuals but only for one night. The next booking was made for only two people for two nights, in a different property owned by the same company. These dates match with two hotel satisfaction survey emails Mr Z shared with us, but don't match up with the version of events provided by Mr Z. This includes the number of extensions made, number of nights they stayed and the number of guests staying. His testimony was that his friend, Mr B, returned in the hire car with him and Mr A, which I find strange given that only two people seemed to stay in the accommodation for the final two of the three

nights. Presumably this would be Mr Z and Mr B, as Mr Z's testimony was that Mr B paid for the extension of the stay. This would also seem unusual as it would mean Mr A was paying for Mr Z's accommodation whilst not even being present himself.

It also doesn't explain why two payments were made to Mr B, as only one extension appears to have been made but money was transferred to Mr B twice. These inconsistencies undermine the credibility of Mr Z's testimony. And I think the inconsistencies between Mr Z's account and the evidence provided by the hotel demonstrates, on balance, it is most likely Mr Z was spending the money for his own benefit and for friends he had with him.

Further expenses on Mr Z's account related to hiring a car which Mr Z said was used to drive himself, Mr A and Mr B to London and back. I have seen evidence from the car hire company that shows the car was hired in Mr Z's name and that Mr Z provided his driving license at the time of hire. The car was hired for the sole use of Mr Z, no additional drivers were listed or present at the time he hired the car. They said he paid for damage and wasn't accompanied by anyone. Mr Z said this is because, Mr A didn't have a valid driver's license. Barclays have purported that as this shows that only he benefitted from the funds, the Cifas loading was justified. I wouldn't go as far as Barclays – I do think Mr Z's testimony is a plausible explanation for why Mr Z would have hired the car. But I do think it is unusual that Mr Z retained the funds and took responsibility for much of the spending including the hire car, though I will return to this point in more detail below.

Mr Z told our service that he met Mr A at university when they lived in shared university accommodation together. He also provided further details such as the course Mr A was taking, his age and a photograph. Our investigator contacted the university and provided the details of Mr A. The university confirmed that this person had never been a student there. I have considered whether Mr A could have lied to Mr Z about being a student there, but Mr Z's account is that they met living in university halls - which would not be available to rent to a non-student. When combining this with the fact Mr A wasn't present or linked to the hire car at all, I am not persuaded that Mr A exists. If he does exist, Mr Z's testimony that he met him in university halls as a student cannot be accurate. So I think it is more likely that Mr Z was responsible for the receipt and utilisation of the fraudulent funds and on balance, it's unlikely there was a third party involved.

There is no set pattern of spending that every fraudster or every money mule follows, so a finding cannot be made in full on this basis. However, if Mr Z was being used as an unwitting money mule it does seem unusual that Mr A would not ask him to withdraw or transfer the money on quickly. Instead, the money remained in Mr Z's account and was used over several days, and it is not in dispute that Mr Z benefitted from the funds. It is clear from the evidence from the hire car company that there were periods of time that Mr Z must have been alone in possession of his card, which means he had total control of the funds and how they were spent. This seems an unlikely scenario if Mr Z was being used as an unwitting money mule as Mr A would have to put a significant level of trust in Mr Z.

Further to this, there were transactions which Mr Z has said he didn't recognise that include restaurants he has visited prior to the fraudulent credits, and money sent to a payee whom he has paid before. So, whilst he is denying making these payments, he doesn't deny making the earlier ones. Furthermore, having reviewed previous activity on Mr Z's account I think the spending looks broadly similar before and after the fraudulent credits were deposited and spent. This includes cash withdrawals similar to those Mr Z made before and after the fraudulent credits in terms of amounts and frequency, and spending money with the same or similar companies as Mr Z did before and after the fraudulent credits. I think this

when combined with the other evidence supports the assertion that Mr Z was responsible for the funds and spending on his account, not Mr A.

So when considering all of this, I think that Barclays were entitled to refer Mr Z to Cifas. I am not satisfied with Mr Z's explanation that he was tricked into being a money mule and think the review of the evidence demonstrates that Barclays were entitled to believe that he was aware the credits he received and spent were fraudulent. As such I find that it is fair and reasonable that Barclays referred Mr Z to Cifas and closed his account. As such Barclays were also entitled to close Mr Z's account with immediate effect in line with the terms and conditions of Mr Z's account.

**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 Mr Z to accept or reject my decision before 30 December 2020.

Katherine Jones  
**ombudsman**