

## **complaint**

Mr K complains Barclays Bank Plc have debited his account without his authority and then closed his account without notification. He wants the bank to refund the monies and reinstate his account.

## **background**

Mr K holds a personal account with Barclays Bank Plc. He also runs his own business as a specialist in tarmacadam and road planings.

In April 2017, Mr K carried out some work for a third party for a cost of £3,300.00.

In May 2017, the third party's bank contacted Barclays to say this payment was the result of a fraud or scam, the account was frozen and the funds were eventually paid back to the third parties bank.

Barclays then closed Mr K's account without notification.

Our investigator looked into things for Mr K. He found that Barclays had taken this action in the absence of reasonable evidence and although he couldn't compel Barclays to reinstate Mr K's account, he felt they should repay the debited funds in full.

Barclays disagreed with our adjudicators findings, they feel there was sufficient evidence of fraudulent activity and asked for this review.

## **my findings**

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

Firstly, I have looked at how Barclays reached their decision that the payment of £3,300 credited to Mr K's account was as the result of a fraud or scam. The bank received notification from a third party's bank alleging money had been paid for a job that wasn't carried out. The third party deemed this fraudulent and had requested their bank recover the funds.

I'm concerned that Barclays appear to have reached this decision based solely on a verbal complaint by the third party and in essence, the complaint goes on to say that, they were unhappy with the workmanship. So this could be a customer dispute rather than a fraudulent action.

I would have expected Barclays to at least approach Mr K to inform him of the dispute and ask if had any evidence to indicate that the funds had been obtained legitimately. I understand a protocol of not alerting a consumer suspected of fraud but I'm persuaded there should be something more than a statement from a third party.

Mr K has provided an invoice for the work in question, which is dated correctly and is broadly in line with the work the third party has complained about. The invoice also clearly states that payment should not be made until the customer is satisfied. The invoice is also signed by the third party.

I accept that there are anomalies with the invoice, it bears a limited company's name but payment was made directly to Mr K. I've also noted the points Barclays have raised namely the funds were paid into a personal account with no known business transactions and withdrawn the following day alongside other concerns regarding the contact phone number. But as the bank didn't ask to see any evidence from Mr K, these couldn't have formed part of the decision making process. It doesn't seem a credible investigation has taken place here and so I'm not satisfied there is enough evidence to debit the payment back to the original bank.

I think there is sufficient evidence here to suggest a consumer dispute is as least as likely and certainly enough for Barclays, had they asked for it, to represent to the third party bank to defend the claim on behalf of their customer, Mr K.

There should have been some form of indemnity arranged with the bank requesting the refund, for precisely this kind of rebuttal, but, in any event, I'm going to ask Barclays to repay the £3,300 debited from Mr K's account.

With regard to the closure of Mr K's bank account without notification there is, by the very complaint Mr K has made and the evidence he has supplied an admission that he has received business payments into a personal account.

This is a breach of the terms and condition of the account, which is for personal use and the bank provide business accounts with different terms, and conditions.

Barclays has the commercial right to close a customer's account if, after review, they do not feel the customer meets their criteria. The usual practice would be to give two months' notice, but Section 11 of Mr K's personal account sets out when the bank may close the account without notification.

A sub section states the customer" must not put the bank in a position where it might break the law, regulation, code or other duty that applies to us if we maintain your account."

The bank must meet its regulatory obligations, one of which is known as customer due diligence. This compels the bank not just to verify the identity of a customer but also to be aware of the nature of their relationship and the origin of the funds deposited by the customer.

I'm persuaded in this case that the bank were unaware this credit was a business payment until they were notified by another financial institution. So, this information alone might mean the bank could be breaking a regulatory requirement or code and as such, the terms and conditions of the account, gave them the right to close the account immediately and without notification. As such, I'm unable to ask then to reinstate Mr K's account.

It's not my role as an ombudsman to identify and then obtain evidence to support a particular theory about what might've happened. Rather, it's to look at how the bank's gone about conducting its investigation. Before Barclays reached a decision to return the payment I think it ought to have approached Mr K for any evidence to the contrary and then look at whether the claim could be defended.

As I've observed, Barclays hasn't conducted what I would consider to be an adequate investigation to justify its decision that this is a definitive fraud and just because the bank asserts the starting of a replacement of driveway and then abandonment is a well-known

scam, it doesn't follow this can be simply assumed on the basis of a third party statement without the necessary evidence.

**my final decision**

My final decision is that I uphold this complaint. To settle it, Barclays Bank Plc must take the following steps within 28 days of Mr K's acceptance of this decision:

1. pay Mr K £3,300, representing the money debited from his account;

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 2 January 2018.

Wendy Steele  
**ombudsman**