

complaint

Mr R complains that Barclays Bank UK PLC unfairly placed a Credit Industry Fraud Avoidance System (CIFAS) marker against his name. Mr R says the marker was added following payments from his account which he didn't authorise. He wants Barclays to remove the marker.

background

In 2015, Mr R opened a student account with Barclays. The account was normally credited by Mr R's mother, until around September 2015, when he began receiving credits from student loan companies. Mr R used his account regularly for daily spending.

Mr R says on 11 February 2016, he lost his wallet which contained his bank card. Mr R says due to memory issues, he'd written his PIN on the back of his bank card. On 12 February 2016, Barclays sent Mr R a new card to use, which he was able to do using his existing PIN.

On 11 February 2016, £4,935.06 was paid into Mr R's account. On 16 February 2016, Barclays was contacted by another bank, which I will refer to as bank A, who said their customer did not authorise the payment of £4,935.06 to Mr R's account. Following this notification, Barclays returned the remaining funds in the account, £331.63, to bank A. And it decided to close Mr R's account. Barclays also thought Mr R had misused his account so they applied a CIFAS marker.

Below is a table which lists the relevant transactions and activity that led Barclays to place the marker against Mr R's name:

<i>Date & time (if known)</i>	<i>Transaction details</i>	<i>Amount</i>	<i>Balance</i>
09/02/2016 21:10	ATM withdrawal	£30	-£469.46
10/02/2016	Bill payment to Ms S	£4	-£499.46
11/02/2016	Bank transfer into account	£4,395.06	£4,435.60
11/02/2016 14:36	ATM withdrawal	£300	£4,135.60
11/02/2016 14:42	Attempted payment to Ms S via mobile banking	£4,000	
11/02/2016 14:45	Attempted payment to Ms S via mobile banking	£1,500	
11/02/2016	Mr R reports bank card lost. Barclays block card		
12/02/2016	New bank card sent to Mr R's address		
13/02/2016 11:08	ATM withdrawal	£50	£4,085.60
13/02/2016 14:06	ASD withdrawal	£2,000	£2,085.60
13/02/2016	Card payment	£20	£2,065.60
13/02/2016	Card payment – online	£20	£2,045.60
13/02/2016	Card payment	£62.39	£1,983.21
14/02/2016	ATM withdrawal	£50	£1,933.21

08:26			
14/02/2016 20:53	ATM withdrawal	£200	£1,733.21
15/02/2016 15:59	ATM withdrawal	£300	£1,433.21
16/02/2016 14:23	ASD withdrawal	£1,100	£333.21
16/02/2016 15:33	Bank A contacts Barclays and raise indemnity		
17/02/2016	Funds removed and returned to Bank A	£331.63	£1.58

Mr R says it was only when he tried to open a new bank account in 2018 that he discovered Barclays had placed a CIFAS marker against his name. Mr R said someone else is responsible for the transactions and he knows nothing about the money which was paid into his account on 11 February 2016. He said he lost his card, which had his PIN number recorded on it due to his memory problems. So it would've been easy for somebody else to use his bank card and account. Mr R said Ms S is a friend from university and they've previously helped each other out financially. So he didn't dispute the payment of £4 sent to Ms S on 10 February 2016.

Barclays said that it wouldn't remove the CIFAS marker because:

- it believed Mr R had wrongfully kept a large credit and believed he carried out the subsequent transactions;
- Mr R's new bank card was sent to his home address and they weren't contacted by Mr R to say he hadn't received it;
- the transactions were made using the genuine card and the correct PIN and
- Mr R's account statements were correctly addressed so Mr R would have been aware of the activity on his account. But there's no evidence Mr R contacted Barclays to raise any concerns about activity on his account.

investigator's view

The investigator didn't think Barclays had done anything wrong when it applied the CIFAS marker. She said Mr R had received fraudulent funds into his account, which over a period of five days in ten separate transactions, had been moved out of the account. The investigator also said that the two attempted payments to Ms S had been done via a mobile banking application. For this to be completed Mr R's five digit online passcode would've been required. And Mr R had not mentioned sharing this with anybody else. On the balance of probabilities, the investigator said it was likely Mr R had authorised all the transactions and retained a wrongful credit. So she said Barclays had been fair when it applied the CIFAS marker.

Mr R disagreed and asked for an ombudsman to look at everything. He insisted that he knew nothing about the transactions. And says he is a victim who is being held responsible for someone else's crimes. He wants Barclays to remove the CIFAS marker.

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 come to the same conclusions as the investigator. I'll explain why.

were the disputed transactions authorised by Mr R?

Mr R says someone else is responsible for the transactions on his account between 11 and 16 February 2016. He's said he knows nothing about the £4,395.06, which was paid into his account. And he's explained that he lost his bank card, which had his PIN number recorded on it. So it would've been easy for somebody else to use his bank card and account.

Barclay's records show that Mr R reported his bank card as lost on 11 February 2016. So it seems likely that Mr R carried out the two transactions on 9 and 10 February 2016 – an ATM withdrawal and payment to Ms S. I've also kept in mind that Mr R hasn't disputed these transactions. Barclays hasn't been able to confirm exactly when on 11 February Mr R reported his card as lost, which isn't surprising given the amount of time that has now passed. But said as soon as it was reported lost it blocked the card. So it wouldn't have been able to have been used by anyone – including Mr R.

On the same day Mr R reported his card lost, £4,395.06 was paid into his account. Barclays can't confirm what time this happened. But from looking at Mr R's account activity at 14:36 an ATM withdrawal for £300 was made. I think it's likely that this withdrawal was made before Mr R reported his card lost, and after the large credit reached Mr R's account. I say this because Barclays had blocked Mr R's card when he reported it lost. So the transaction wouldn't have been authorised. And the card would've been captured by the cash machine.

But even if the machine hadn't captured the card, the withdrawal would've been declined because as of 10 February 2016, Mr R didn't have enough money in his account to make the withdrawal. Mr R says he can't remember if he made the withdrawal as it was so long ago. So I think it's likely that Mr R authorised this transaction and was still in possession of his 'lost' bank card when the fraudulent funds were paid into his account.

Within minutes of this withdrawal two payments were attempted to Mr R's friend Ms S via a mobile banking application. The first payment was for £4,000 and the second for £1,500. The IP address used to make the transactions were in the same area as the ATM machine used at 14:36. Barclays says these payments didn't go through as it had concerns the payments weren't genuine.

Barclays has provided evidence to show that a new bank card was issued to Mr R and sent by first class post to Mr R's address on 12 February 2016. Barclays has also confirmed that a new PIN wasn't ordered, which means Mr R's PIN remained the same as the one Mr R used for his lost card. Barclays says Mr R didn't contact them to say he hadn't received his new bank card. And it has provided evidence to show that the new card was used for all the transactions from 13 February 2016.

Between 13 and 16 February 2016, nine transactions took place to withdraw money from the account. These included ATM and Assisted Service Device (ASD) withdrawals. And card payments.

From looking at what's happened here, there are three possible explanations for how the disputed withdrawals came to be made. They are:

- someone unknown to Mr R made the transactions;
- somebody known to Mr R was responsible for the transactions or
- Mr R carried out the transactions himself

The first is that someone unknown to Mr R made the transactions. This may explain the first transaction - the £300 ATM withdrawal. Especially if I also accept Mr R wrote his PIN on his bank card, which would explain how someone else was able to get hold of Mr R's PIN.

But this explanation isn't plausible for the subsequent transactions. I say this because the card used for this transaction was blocked after Mr R reported his card lost. This means that someone unknown to Mr R would have also needed to be in possession of Mr R's new bank card, which had been sent out to Mr R's home address. So they would've needed to be aware of where Mr R lived, known Mr R had reported his card lost and intercepted the new bank card. The same person would've also needed to be in possession of Mr R's mobile banking information. But Mr R has told us he never disclosed this information to anyone. So when I weigh everything up, I think it's unlikely that someone unknown to Mr R made the transactions.

The second explanation is that somebody known to Mr R made the transactions. I accept it's possible that someone close to Mr R or living at his address is responsible for the transactions. And to have used Mr R's account to receive the fraudulent credit. But from looking at Mr R's account activity this person would need to be in possession of both cards – the *lost* and *new* card. I think this is unlikely.

I also think it's unlikely that someone known to Mr R would try and make two payments to Ms S, who Mr R has told us is *his* friend. I say this because there would be no benefit to them doing this. I can also see that both payments to Ms S were attempted within minutes of the £300 ATM withdrawal and via Mr R's mobile banking application, which to have been successful would've required Mr R's five digit security passcode. And Mr R has said he has not shared this information with anyone. So for someone known to Mr R to have carried out these transactions they would've needed to be in possession of both bank cards and Mr R's online banking information.

Having looked at what's happened in this case I think it's more likely than not that Mr R carried out the transactions himself. I say this because:

- Mr R says he sent money to Ms S from his account and other bank accounts prior to 10 February 2016;
- Mr R says Ms S is a personal friend of his;
- it's likely Mr R withdrew £300 from his account on 11 February 2016, the same day fraudulent funds were paid into the account;
- Barclays sent a new bank card to Mr R's home address;
- Mr R never contacted Barclays to report he hadn't received his new bank card;
- there were no PIN changes and his new bank card had the same PIN as Mr R's lost bank card;
- the disputed transactions were authorised using Mr R's genuine cards (chip) and PIN;
- there's no convincing explanation for how a third party could have gained possession of Mr R's new bank card and known Mr R's PIN;
- Mr R never disclosed his online banking details to anyone else;
- Mr R says he was never approached by anyone else to use his account;

- despite Mr R's concern about being a victim of someone else's' crime I've not seen any evidence that he contacted the police and
- Mr R didn't dispute the large amount of money which was paid into his account, with Barclays at the time.

So based on this, I think it's more likely than not that Mr R made or authorised the transactions that he disputes.

CIFAS marker

Barclays says it applied the CIFAS marker because bank A said their customer didn't authorise the payment made into Mr R's account. And Mr R retained a wrongful credit. In other words Mr R kept money that wasn't his. So I've looked at whether Barclays was fair to apply the marker, based on the evidence it had, the investigation it carried out. And what the rules say about applying such markers.

CIFAS guidance says the business must have carried out checks of sufficient depth to meet the burden of proof set by CIFAS, which at that time was that Barclays needed to have enough information to make a formal complaint to the police or other relevant law enforcement agencies. And that any filing should be for confirmed cases of fraud, rather than mere suspicion.

It's not in dispute that Mr R received fraudulent funds into his account. And for the reasons I've already explained, I think it's likely R wrongfully retained these funds and authorised all of the transactions he disputes. On that basis, I think it's fair that Barclays reported Mr R to CIFAS. And I'm not going to ask Barclays to remove the marker against his name.

my final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 August 2019.

Sharon Kerrison
ombudsman