

complaint

Mr M complains that Barclays Bank UK PLC has added a marker to CIFAS, the national fraud database, which is making it difficult for him to open an account elsewhere.

background

Mr M banked with Barclays. On 18 September 2017 a new savings account was opened in his name online. And on 20 September 2017 a credit for £4,240 was received into this account. Part of this money was transferred to a third party bank account and the rest was quickly withdrawn from his accounts. Barclays received a report that these funds were fraudulently obtained. It told Mr M that it would be closing his account. He later found out that it had registered the marker when accounts he held at other businesses were closed and he wasn't able to open an account elsewhere.

Barclays said it had registered the marker correctly. Mr M hadn't been able to explain how his details had been discovered by someone else. Some of these withdrawals were made at an 'ASD' machine using his card and PIN and also his date of birth. And he had logged into mobile banking during this period but didn't then report what had happened or the loss of his card.

Our investigator didn't recommend that the complaint be upheld. He said that:

- Mr M had now said that he had lent his mobile phone to someone in his college and believes that person saw all his security details kept on a 'notes' page.
- Mr M said he lost his card around that time. This was kept separately in a pocket and when he noticed he couldn't report it through his mobile banking app as he was 'locked out'.
- He didn't think it likely that someone could have obtained Mr M's details by chance when using his phone and then been able to obtain his card. Someone would also have needed to be able to open an account. He also didn't think it likely someone would keep their date of birth on a phone to paste into job applications – which had been Mr M's explanation.
- The records from Barclays showed that Mr M had been regularly checking his account using mobile banking during this time. And Mr M had said he'd had this phone with him during the period.
- He thought it most likely Mr M had given someone else access to his security information and account.
- Barclays was entitled to close the account and had met the criteria for registering a marker at CIFAS.

Mr M, who is represented in this complaint, didn't agree. He said that he never gave permission for anyone else to use his account. His date of birth could have been known to others at the college. The person who borrowed his phone was an opportunist and took his information. It was totally unacceptable that Barclays had registered this marker and not provided the information it had relied on. He said he would be contacting the police.

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 need to take account of the Payment Services Regulations 2009. And to think about whether Mr M authorised the payments from his account. That's more than the payments being authenticated but would require him to consent to them. If he didn't authorise them then generally Barclays wouldn't be able to hold him responsible for them.

I also need to consider whether the report to CIFAS was made fairly. On this point, Barclays needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities. I won't be specifically looking at whether it complied with data protection requirements in providing the information Mr M's representative said he wanted and that's something he may want to take up with the Information Commissioner's Office.

the use of his account

I'm satisfied that the payments from the accounts were correctly authenticated with the correct security information based on the evidence I've seen from Barclays. The issue I need to decide is whether Mr M consented to them.

Mr M has given different explanations of what happened. I appreciate that some of these were given through his father but who had authority to act on his behalf. The complaint notes from Barclays made when it spoke with his father said that he thought someone had seen his PIN over his shoulder. Mr M wrote to this service saying that he had lent his phone to a named person as "he wanted to make a call." And that this person definitely saw his details all recorded on this phone although Mr M didn't realise that at the time. When challenged about why he would have kept his date of birth on a notes page on his phone, his representative then said that it would have been known anyway as he was at college.

I'm going to set out all the findings I'd need to think most likely if I was to accept Mr M's account:

- A person was by chance (and unknown to Mr M at the time) able to access his phone and under the guise of making a call searched it for information and found a page containing Mr M's security information including what would be needed to log on to online banking and his PIN.
- That person, if he didn't see the date of birth on the phone, was also able to find this out and later to obtain Mr M's card also without him knowing.
- That person was able to open a savings account using online banking to access Mr M's customer profile and then took the risk of detection by waiting two days before trying to use the account.
- Mr M didn't notice what was happening. Although he says he didn't notice his card was missing because he doesn't use his account he still did check his account very often using mobile banking and the phone number already registered. In particular he did so twice on 18 September 2018, four times on 19 September 2018 and twice on 20 September 2018 both times on that day after the money in question had been paid in and then removed from his accounts. So I'd need to think the new account opened and these payments didn't become apparent to him and he was checking on a regular basis for some other purpose.
- Mr M couldn't use any other means to try and tell Barclays his card was lost and seemed to wait until he received a letter saying his account was being closed.

I'm afraid that these aren't all findings I'm able to make as most likely based on the available evidence. I think it most likely that Mr M was aware of what was happening with his accounts

and either made the payments himself or allowed someone else to make them. I consider he was aware that the money that came into his account wasn't due to him. And so I find he authorised the activity on his account and is fairly responsible for what happened even if someone else made the withdrawals.

the CIFAS marker

Barclays says that it applied the CIFAS marker because Mr M received fraudulent funds into his account. So I've looked at whether Barclays was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Barclays needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr M's account of events and the evidence Barclays has provided, I'm satisfied that Barclays had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr M received fraudulent funds into his account and reasonably knew that they weren't his.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Barclays had grounds to believe that Mr M had used fraudulently obtained funds based on the evidence it had.

I consider Barclays had a basis to close his account without notice under the terms and conditions as it believed fraud had taken place. I appreciate the difficulties Mr M is having opening an account elsewhere but I don't have a basis to require Barclays to do anything further.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 March 2020.

Michael Crewe
ombudsman