

Complaint

Mr R is unhappy that Barclays Bank UK PLC (“Barclays”) recorded a fraud prevention marker against him.

Background

In February 2018, Mr R received a payment of £1,000.00 into his Barclays account. The funds were quickly spent through a combination of debit card transactions and cash machine withdrawals. Barclays subsequently received a notification from a third-party bank saying its customer, who was Mr R’s ex-wife, had reported the £1,000.00 had been transferred from her account without her permission. Barclays reviewed Mr R’s account and closed it in March 2018. It then went on to register a fraud prevention marker against him.

After learning that Barclays had recorded a fraud prevention marker against him, Mr R complained to Barclays. Barclays looked at Mr R’s complaint and didn’t uphold it. As Mr R remained dissatisfied, he referred the matter to our service.

One of our adjudicators looked into Mr R’s concerns. She didn’t think that Barclays had done enough to show that Mr R was complicit in fraud and so it unfairly recorded the fraud prevention marker against Mr R. Barclays disagreed and so the complaint was passed to an ombudsman for a final decision.

My findings

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

The marker that Barclays has filed is intended to record that there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds. In order to file such a marker, it isn’t required to prove beyond reasonable doubt that Mr R is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

What this means in practice is that Barclays must first be able to show that fraudulent funds entered Mr R’s account, whether they were retained or merely passed through. Secondly, Barclays also needs to have strong evidence to show that Mr R was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr R allowing someone else to use his account in order to receive an illegitimate payment. But a marker shouldn’t be registered against someone who was unwitting; there should be enough evidence to show complicity.

To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

In order to determine Mr R's complaint, I need to decide whether I think Barclays had enough evidence to show fraudulent funds entered Mr R's account and that he was complicit in this. It's important to note Barclays had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters, I don't think that Barclays did enough to establish that Mr R's account had been in receipt of fraudulent funds. I accept that Barclays did receive a notification from Mr R's ex-wife's bank confirming that she'd reported that a £1,000.00 transfer had been made from her account without her knowledge or permission. So I can understand why Barclays had concerns about this credit.

However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. Barclays also had to have sufficient evidence to show Mr R was complicit in fraudulent activity. And I don't think that it had this here.

I say this because Barclays recorded the fraud marker without obtaining Mr R's version of events. I accept that its records suggest that it sent a letter to Mr R, on 5 March 2018, explaining that his account had been blocked and that he needed to get in contact. But this was after the funds which remained in his account had already been returned. And while Mr R's failure to respond to its letter may well have been an appropriate reason to close his account (Mr R has said he didn't respond because he was in the middle of resolving his divorce), I don't think that it automatically follows that it was fair and reasonable to also record a fraud marker.

Mr R has since said that he had his wages paid into his ex-wife's account and she regularly made transfers to him. Having looked through copies of the ledgers Barclays has provided it's clear that Mr R's ex-wife did make account transfers to him and as far as I can see he wasn't receiving a regular income into this account either. So it isn't immediately apparent to me that this transfer into Mr R's account was unusual or out of the ordinary. Indeed, I note that Barclays' records appear to suggest that its investigator thought that the fraud notification may have been borne out of a civil dispute and wanted to wait for Mr R's account of events before proceeding.

Barclays' response to our adjudicator's assessment queried whether she'd contacted the third-party bank to ask what evidence it had to support its fraud notification. I have to say that I find Barclays' comments to be incredibly disappointing as this is information it should have obtained in March 2018 before deciding it had enough to record a fraud marker against Mr R in the first place.

I've also considered what Barclays has said about the funds being removed from Mr R's account quickly. I accept that this did happen. But looking through the ledgers, it's clear that Mr R regularly withdrew funds from cash machines and he was only ever in credit by small amounts. So I don't think that the funds being used and withdrawn in the way they were was necessarily unusual, or indicative of Mr R having fraudulently obtained the funds in question.

More importantly it is Barclays' responsibility to demonstrate that Mr R was knowingly involved in fraudulent activity. And I think that it has failed to do that here. Barclays needed to have relevant and rigorous evidence such that it could report the matter to the police. Simply pointing out that it had received a notification, from a third-party, that fraudulent activity took place – especially where it didn't obtain the necessary evidence to corroborate

this and it appeared to accept there might have been a reasonable explanation for the transfer in question - just isn't enough to meet what is a high bar. This is especially the case seeing as the facts and circumstances of this case appear to support Mr R's version of events being plausible.

Overall and having considered everything, I don't think that Barclays had sufficient evidence to meet the test for recording a fraud marker against Mr R. As this is the case, I think that it was unfair for Barclays to record a fraud prevention marker in the circumstances that it did. So I'm upholding Mr R's complaint and Barclays needs to remove any and all fraud markers it has recorded.

My final decision

For the reasons I've explained, I'm upholding Mr R's complaint. Barclays Bank UK PLC should remove any and all fraud markers it has recorded against Mr R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 31 May 2022.

Jeshen Narayanan
Ombudsman