

The complaint

Miss B complains that Barclays Bank UK PLC (Barclays) closed her account, declined her fraud claim and registered a CIFAS marker against her.

Miss B is represented by her father, Mr B.

What happened

On 3 June 2019, Miss B's card was used to make several transactions she says she didn't authorise. There were a few balance enquiries and ATM withdrawal attempts against Miss B's existing balance. But there was also a deposit of £2,800 paid into Miss B's account, which was immediately withdrawn using an assisted service device (an advanced, in-branch ATM) by way of a £2,000 cash withdrawal and an £800 bank transfer.

Miss B's testimony as to what happened has been inconsistent on some points, but she has always maintained that she lost her card prior to the disputed transactions, that the PIN wasn't with her card and that she doesn't know how her PIN could have been discovered.

Barclays blocked Miss B's account while it carried out an investigation, but it ultimately rejected Miss B's complaint, closed her account and registered a marker against her name with the Credit Industry Fraud Avoidance System (CIFAS). Miss B complained but Barclays issued its final response on 21 November 2019 saying that it didn't uphold Miss B's complaint. So, Miss B brought her complaint to our service.

Our investigator didn't uphold Miss B's complaint. She said she'd considered the evidence and decided Miss B had consented to the disputed transactions. She noted that all of the transactions would have required Miss B's card and PIN, and that there was no logical explanation as to how Miss B's PIN could have been compromised.

She also found Miss B's testimony to be inconsistent, particularly as to when and how she first discovered the transactions. And she noted that there were balance enquiries immediately before the £2,000 withdrawal, which suggests that whoever withdrew the money was expecting it. She also noted that Miss B had referred to instances when she had checked her online banking, but Barclays had provided evidence to show Miss B wasn't registered for online banking and that any online banking access would have been denied when Miss B's account was blocked.

Our investigator also felt Barclays acted fairly when it closed Miss B's account, and when it registered a CIFAS marker against her.

Miss B didn't agree and made a number of representations through Mr B in response. I've read them all in full and have summarised the key points below:

- Miss B's recollection of events was made difficult by the time it took Barclays to look into the matter initially, and the time that had passed between the date of the event and the date our service had asked her to recall what had happened (almost two years).

- Miss B has difficulty processing information and questions, and provided a letter from her school confirming as much.
- A fraudster could have obtained Miss B's PIN through skimming, phishing or other nefarious means. And there was no evidence Miss B had passed her details onto someone else.
- Mr B was sure Miss B had previously used online banking via her app, but he said he would check with Miss B's local branch.
- Mr B felt the timings of the balance enquiries demonstrated that the *fraudster* had been waiting for the £2,800 to clear before using the card. And he questioned why Barclays didn't treat the withdrawals as suspicious, given they were out of keeping with Miss B's previous account use.
- He also gave a detailed explanation of the timeline of events.

Our investigator considered the additional points but didn't change her answer, so Miss B asked for an ombudsman to review the matter afresh.

On 5 April 2022, I issued a provisional decision. In it, I said:

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

Account closure

Just as a customer may close an account with a bank, a bank is entitled to close an account with a customer. But when it closes the account, it must do so in a way which complies with the terms and conditions of the account.

The terms of Miss B's account, with which both Barclays and Miss B had to comply, say that Barclays can close Miss B's account without advance notice in certain circumstances. And there's no obligation, whether contractual or otherwise, for Barclays to disclose the reasons behind its decision.

Having considered the information Barclays has provided, I'm satisfied it acted in accordance with the relevant terms and conditions when it closed Miss B's account. It followed the correct procedure and set out all the information it was obliged to in the closure letter dated 25 June 2019. That being the case, I see no basis upon which I can reasonably uphold this part of Miss B's complaint.

Disputed transactions

In simple terms, if I'm to uphold this part of Miss B's complaint, I'd need to be persuaded that she didn't authorise the transactions in question. That is to say that she didn't make the transactions herself, or give someone permission to make the transactions.

All of the transactions Miss B disputes were made using Miss B's card and PIN. In addition to that, a deposit of £2,800 was made into Miss B's account, which she says wasn't her. So, whoever made that deposit would have needed to know Miss B's account number and sort code.

Beyond that, the £2,800 was then withdrawn at a Barclays Assisted Service Device (ASD), which is a more advanced version of a cash machine. It's located in-branch and requires an additional layer of security to clear payments. Barclays has provided evidence that shows the withdrawals at the ASD required the withdrawer to enter details of Miss B's date of birth. So, whoever carried out the disputed transactions would have had to have Miss B's debit

card, sort code and account number, PIN and date of birth.

Miss B first reported the transactions to Barclays on Tuesday 4 June 2019. She did so in a call to Barclays, in which she said she had lost her card “probably last weekend” and that her PIN wasn’t with her card and nobody knew it except for her.

When our investigator asked Miss B when she lost her card, she said it was on Thursday 31 May 2019, after she’d been to the pub. She repeated nobody else knew her PIN and said nobody else knew her sort code and account number either. And said she reported the disputed transactions when she returned home from a weekend away and logged into her online banking.

It’s entirely possible that Miss B’s sort code and account number appeared on her debit card, so it’s possible that a fraudster would have known Miss B’s account details, simply by obtaining her debit card, which of course Miss B says she lost. However, it’s more difficult to establish how Miss B’s PIN and date of birth could have been discovered by the same person.

Miss B says her last genuine use of her card and PIN was on 31 May 2019, at her local pub. So it’s possible that a fraudster could have shoulder-surfed Miss B and made a note of her PIN at that point. However, it would be unusual for a fraudster to wait for three days before making use of the card. As a general rule, fraudsters attempt to use stolen cards quickly, before the true owner discovers the card is lost, and reports the loss to the bank which in turn blocks the card.

Mr B has suggested Miss B’s PIN could have been obtained using phishing or skimming techniques too. However, I’ve seen no evidence to support that suggestion. Miss B didn’t tell either Barclays or our investigator that there was anything unusual about the payment device she used at her local pub, so I can’t reasonably say there was a skimming device attached to the card machine.

Miss B hasn’t told our service that she clicked on any suspicious links around the time she lost her card. And even if she had, that wouldn’t explain how a hacker would have obtained Miss B’s PIN. Further, that would require the same hacker who tricked Miss B into clicking on a link to have obtained Miss B’s physical card after she lost it.

I consider that sequence of events to be too remote a possibility, and I can’t say on the balance of probabilities that Miss B’s details were more likely than not compromised in that manner. And I don’t consider it would be appropriate to base my decision purely on speculation that isn’t supported by persuasive evidence.

Aside from there being no likely point of compromise for Miss B’s PIN, I also haven’t seen any evidence as to how Miss B’s date of birth could have been compromised. And, as I’ve explained above, Miss B’s date of birth was needed to process the two ASD withdrawals. Mr B did question why Barclays didn’t block the debits given they were out of keeping with Miss B’s regular account use, but I’m satisfied it wasn’t unreasonable for Barclays to allow the transactions, given the front-loaded additional security requirements, i.e. Miss B’s date of birth was required as well as her PIN.

Finally, there’s the issue of Miss B’s credibility. I’ve listened to what Mr B has said about Miss B’s impaired ability to process information, and I’ve taken into account the time that passed between the events in question and Miss B’s conversations with our service about those events. For those reasons, I don’t put as much weight on Miss B’s testimony as I do on the evidence I’ve referred to above.

With that being said, Miss B's inconsistency in her testimony does bear mention. When Miss B called Barclays on 4 June 2019, she was asked if she had previously contacted Barclays to cancel her card after she had lost it, to which she replied "yes". Miss B also initially told our service she had reported the card as missing as soon as she noticed, which she said was on 3 June 2019 (although she said it was likely missing since 31 May 2019).

However, I've seen no evidence to show she asked Barclays to cancel her card and if she had, I would have expected the payment attempts to be rejected.

Miss B has also presented different versions of events as to how she discovered the disputed transactions. When she first called Barclays, she said she couldn't get onto online banking and had had a statement through that showed she was overdrawn, which she thought was wrong. But when Miss B spoke to our investigator, she said she noticed the disputed activity by logging into her online banking.

Barclays has provided a screenshot of its system notes that suggest Miss B wasn't registered for online banking. Mr B did say he would check with his local Barclays branch to confirm if Miss B had online banking, but I haven't seen that he has done so. However, while it is strange for a customer to be adamant that she has access to online banking when the bank's records show no such registration, I don't consider this to be a turning point for the complaint. So, I haven't attached any significant weight to this point when reaching my decision.

For the reasons I've set out above and based on the evidence I've seen so far, I think it's more likely than not that the disputed transactions were either carried out by Miss B, or by someone with Miss B's permission. It follows that I'm not minded to ask Barclays to refund the transactions in question.

CIFAS marker

Barclays hasn't disclosed why it applied a CIFAS marker against Miss B, and isn't obliged to do so. However, I've looked at the reasons it applied the marker and I've thought about the evidence it relied on when it did so. Having done so, I need to consider whether the report to CIFAS was made fairly.

Barclays needs to have more than mere 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 police. What this means in practice is that bank must first be able to show that fraudulent funds have entered Miss B's account, whether they are retained or pass through the account. And secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to decide whether Barclays had sufficient evidence to meet the standard of proof and load a marker against Miss B. Having looked at all the evidence I'm satisfied it has.

Miss B says the funds that entered her account before Barclays closed it weren't paid in by her. But for the same reasons I'm not asking Barclays to refund Miss B's money, I accept Barclays acted fairly when it applied a CIFAS marker to Miss B's account. And on the balance of probabilities, I'm satisfied that Miss B either withdrew those funds herself, or gave someone permission to do so, along with the security details that would be needed.

With that being said, if I were satisfied that Miss B wasn't complicit, I could ask Barclays to remove the marker. But given what I've said about the most likely explanation of how her details were compromised, I can't reasonably say she wasn't complicit.

Having independently assessed Barclays' rationale and considered the evidence both parties have submitted, I'm satisfied it was entitled to register a CIFAS marker against Miss B."

I asked both parties to provide any further evidence or submissions by 3 May 2022. Barclays said it had nothing further to add, but Miss B didn't respond.

What I've decided – and why

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

Because neither party responded to the points I raised in my provisional decision, I see no reason to change it. It follows that my final decision is that I do not uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint..

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 13 June 2022.

Alex Brooke-Smith
Ombudsman