

**The complaint**

Mr B complains about Starling Bank Limited's decision to record a fraud marker against his name. Mr B would like the fraud marker removed.

**What happened**

Mr B held an account with Starling. On occasion, he used his Starling account to transfer funds to a bitcoin exchange. Mr B said he was working abroad at the time, and bitcoin was the most efficient way to convert his salary currency back to pounds.

In February 2019, Starling received a report from another bank to inform them that Mr B had been the recipient of fraudulent funds. Starling carried out an investigation and decided to end their relationship with Mr B. The account was closed in April 2019 and Starling registered a Credit Industry Fraud Avoidance System (CIFAS) marker against Mr B.

In December 2019, Mr B applied for another bank account and it immediately closed. Mr B investigated the reason for this and learned about the CIFAS marker – so he complained to Starling. Starling responded to Mr B's complaint and explained they wouldn't be removing the CIFAS marker.

Starling held Mr B accountable for the misuse of his account – they said he was using a personal account for business purposes. And they thought he had moved fraudulent funds through the account. Mr B strongly denied doing anything wrong. Starling had asked him about three payments from an individual with the reference 'holiday'. Mr B said the payments in question were linked to a bitcoin trade with an individual (different from the sender of the funds) he had done a lot of business with before and trusted. Mr B explained that one of the transactions was made twice – and instead of refunding the individual who sent the money to Mr B's account, the bitcoin trader asked to exchange the money for bitcoins instead. Starling didn't agree that Mr B carried out sufficient checks to know where the money had come from and didn't understand why the money was coming from one individual, and the bitcoin trade was being carried out by another individual.

Our investigator didn't uphold Mr B's complaint. In summary he said Mr B should have been aware to carry out due diligence checks on the money he was receiving as part of the bitcoin trade, but he didn't. He also agreed Mr B had contributed to the laundering of money by trading the fraudulent money received into his account into bitcoins. So, he thought the CIFAS marker was fair.

Mr B disagreed. In summary, he said he did carry out due diligence checks but the bitcoin buyer he was trading with was somebody he'd done a lot of business with for a number of years and trusted him. He explained he wasn't alerted by the use of the reference 'holiday' as he himself was on holiday at the time of receiving the money. Mr B also explained that as not all banks favour the trading of bitcoins, he didn't want the reference to alarm Starling that he was trading.

As an agreement couldn't be reached, the complaint has been passed to me to decide.

**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.

I've noted that Mr B has made a number of quite detailed submissions and provided helpful screenshots. I've considered all of these, but I don't believe it's necessary to address each and every point that Mr B has made in order to meet my statutory duty to determine his complaint. I'm required to do that with minimum formality, and so I'll address the issues that I consider to be the most important. I do stress however that I've considered everything that Mr B and Starling have said before reaching my decision.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from banks as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. As part of this complaint, we have received evidence from Starling and other banks. Some of the information which has been provided is information that we considered should be kept confidential.

*Was the fraud marker applied fairly?*

I've looked at whether it was fair of Starling to apply the marker, based on the evidence and what the rules say about applying such markers.

When a business is a member of CIFAS it can record a marker against an individual customer when that customer has used their account fraudulently (a 'misuse of facility' marker). This type of marker will stay on record for six years and will usually make it difficult for a customer to take out new financial products as Mr B has encountered. In order to file such a marker, Starling aren't required to prove beyond reasonable doubt that Mr B is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS 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 a bank must first be able to show that either there was an attempt to put fraudulent funds into Mr B's account or fraudulent funds have entered Mr B's account and were either moved on or retained. Secondly, the bank will need to have strong evidence to show that Mr B was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

I've thought about whether Starling have provided evidence that fraudulent funds entered Mr B's account and he knew they were, or might be, illegitimate payments. And I think they have, I'll explain why below:

- I'm satisfied the evidence Starling provided regarding the payments credited into Mr B's account shows they were fraudulent.
- I'm concerned and surprised at the use of reference 'holiday' if the payments were part of a bitcoin trade as Mr B has suggested. I appreciate Mr B says he was on holiday at the time so didn't find the reference unusual, but I haven't seen any evidence of that – or that Mr B made it known to anybody involved that he was on holiday. Mr B also said the individual who made the payments wasn't the bitcoin

trader so in particular, I struggle to understand why this individual making the payments would have known Mr B was on holiday at the time. And as the money didn't form part of Mr B's holiday costs, I don't find the explanation plausible.

- I recognise Mr B says he didn't want the reference to alert Starling to the fact he was trading bitcoins. I can understand Mr B's point here. But, as I've explained, I haven't seen any plausible reason to explain the use of the reference 'holiday' so I can't agree this shouldn't have raised concerns.
- I haven't seen any evidence to show Mr B questioned why he was receiving money from another individual to the one he was conducting trades with.
- While I appreciate Mr B's position of trust with the bitcoin trader, I can't reasonably uphold his complaint on this point alone. Ultimately, Mr B has a duty of care to ensure he knows who he is trading with – and while he may have trusted the individual he was trading with, he didn't have enough information to satisfy himself of the individual making the payments and what that individual thought the payments were for.
- The individual transferred two payments of the same amount into Mr B's account – and the bitcoin trader (who Mr B says he trusted) asked Mr B to use the money and trade further bitcoins. I'm concerned at why Mr B didn't question this and while I appreciate he says he didn't have the bank details of the sender of the funds; that doesn't satisfy me of the reasons of why he continued to move the money on without asking any further questions.
- I'm satisfied Mr B did make use of the money and did move the money on by transferring the funds into bitcoin.

In summary for the reasons I've explained above I think Mr B was complicit in receiving the fraudulent payments. It follows that Starling have met the requirements to load a CIFAS marker and I won't be asking the bank to do anything further.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 November 2021.

Hayley West  
**Ombudsman**