

The complaint

Mr L complains that Clydesdale Bank Plc loaded a Credit Industry Fraud Awareness Marker (CIFAS) against his name and closed his bank account. He'd like this removed and compensation for the impact this has had on him.

What happened

Mr L had a current account with Clydesdale.

On the 21 June 2019 Mr L deposited a cheque – via his mobile banking app – into his current account. But instead of writing £43 Mr L submitted that the cheque was worth £430. On the 22 June 2019 Mr L transferred out £430 to an existing payee.

On the 27 June 2019 Mr L deposited a second cheque, again via the mobile banking app. Mr L entered the cheque was for £500 but it was for £15.

Clydesdale thought that Mr L had misused his account so applied a CIFAS marker and closed his bank account.

Mr L complained to Clydesdale asking for the marker to be removed.

Mr L accepts that the value of the cheques wasn't the same as the amount he deposited into his account. But, at the time he was under a significant amount of stress including being abused and harassed by members of the public, on strong opiate based medication for back pain and wasn't medicated – or in treatment – for his mental health conditions. Mr L explained for this reason he was unable to focus and believes he must have accidentally entered the incorrect amounts.

Clydesdale responded to say that they hadn't acted unfairly in loading the marker on Mr L's record.

Mr L wasn't happy with Clydesdale response so complained to our service. He explained that he hasn't been able to access his benefits.

One of our investigators looked at Mr L's complaint. He asked Mr L if he could remember who the £430 payment went to and why he made the payment. Mr L explained that he couldn't recall who the payee was. But reiterated his point that at the time, due to his fragile mental state, he spent the funds very quickly.

Our investigator didn't think Clydesdale had acted unfairly in loading the marker. In summary he thought that Mr L had been inconsistent in his version of events and although he thought it possible one cheque might have been entered incorrectly, he didn't think it was plausible this happened on two occasions.

Mr L didn't accept our investigator's view. In summary he said:

- He wasn't able to focus properly or know what he was doing at the time because he wasn't on medication for his condition – but the investigator had got confused about this and thought he'd changed his testimony. He was on pain medication but wasn't medicated for his mental health conditions.

As Mr L didn't accept our investigator's opinion it's was passed to me for a decision.

On reviewing Mr L's complaint I came to the same conclusion as our investigator but I expanded on the reasoning when considering Mr L's complaint about his account closure.

I issued my Provisional Decision to both parties and asked them for further comments.

Clydesdale accepted my Provisional Decision but Mr L did not. He responded and said:

- At the time of the cheque deposits he typed in the amount quickly and took a photo.
- He didn't get asked for any confirmation and wasn't on any medication at the time.
- Mr L also explained that he's since been referred for speech and language therapy and advised he might need support in the longer term – and this shows he might not be able to notice things.

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.

In doing so I've not changed the conclusion I reached in my Provisional Decision. In my Provisional Decision I said:

Clydesdale have explained that it loaded a marker because they believe that Mr L deliberately entered in the incorrect value for the cheques and misused his account. So I've looked at whether Clydesdale was fair to apply the marker, based on the evidence it had and 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 Clydesdale 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. In addition, CIFAS guidance sets out businesses are expected to retain the evidence they rely upon when applying a CIFAS marker for at least six years.

Having reviewed Mr L's account of events and the evidence Clydesdale have provided, I'm satisfied that Clydesdale have sufficient evidence for the CIFAS marker to be recorded on his file. In coming to this view I've taken into account the following reasons:

- *Clydesdale have provided evidence that Mr L deposited two cheques on the 21 and 27 June 2019 where he entered the incorrect amounts. Mr L doesn't dispute this.*
- *I find it difficult to believe that Mr L incorrectly entered the amount of his cheques on two occasions in close succession. I say this because on both occasions the amounts entered were significantly higher than the value of the cheque – so the first cheque for £43 was entered in as £430 and the second cheque for £15 was recorded as £500. I think it's surprising that on both occasions Mr L entered in significantly inflated amounts.*
- *I've also seen a copy of the process for depositing a cheque via the mobile banking app. This explains that a customer needs to enter the value for a cheque on one*

occasion, then take photos of the cheque before confirming the cheque amount. The customer will then receive a notification to show the amount deposited. When Mr L made his deposits on both occasions after entering the incorrect amount he would have been given a second opportunity to stop the deposit, and following the deposit he would have been notified of the amount he'd submitted. I think it's surprising Mr L didn't notice the discrepancy in value on either occasion.

- *After Mr L deposited the £43 cheque for £430, the next day a transfer of £430 was made out of his account to an existing payee. Mr L doesn't dispute the transfer but is unable to recall who this payment went to – despite this being an existing payee that I can see Mr L made eleven payments to during the month of June. I find this surprising. Mr L initially explained that due to his mental health condition he was unable to control his behaviour and immediately spent the incorrectly deposited funds. But, for the reason I've explained above his activity doesn't support this. Mr L in fact deposited £430 and then transferred this money out the next day.*

I understand that Mr L has diagnosed mental health conditions which he advises impacted on his behaviour at the time of depositing the cheques. But I satisfied that Clydesdale have sufficient evidence to indicate that Mr L misused his account – and have enough evidence to make a formal complaint to the police

Account closure:

Mr L's also complained about his bank account being closed

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

I've looked at the terms and conditions of Mr L's account and there are certain *exceptional circumstances* when Clydesdale can close an account immediately. Section 18.4 states Clydesdale *will rely on this* condition if they reasonably believe:

- a) *you have seriously or persistently broken these conditions or any of the other conditions which apply to that account;*
- b) *you have acted fraudulently;*
- c) *you knowingly use or try to use your account for illegal purposes, or let someone else do so;*
- d) *you have or may soon become bankrupt (in these circumstances, we may offer you an alternative service);*
- e) *you have given us false information;*
- f) *you may cause us to break any law; or*
- g) *you use threatening behaviour to any of our staff*

I'm satisfied that Clydesdale have complied with these terms and conditions in closing Mr L's account.

I realise this will be disappointing to Mr Land I understand that the closure of Mr L's account caused him inconvenience. But the bank can make commercial decisions about who it offers banking services to. They can't unfairly discriminate against a customer. But, they can decide they no longer wish to do business with individuals. That's because they have the commercial freedom to decide who'd they like to contract with. And I'm satisfied that in Mr L's case Clydesdale exercised its commercial freedom legitimately when it decided to close his accounts. So I can't fairly and reasonably say Clydesdale have done anything wrong here.

Mr L responded to my Provisional Decision by saying that at the time of the cheque deposits he typed in the amount quickly and took a photo. He didn't get asked for any confirmation and wasn't on any medication at the time. Mr L also explained that he's since been referred for speech and language therapy and advised he might need support in the longer term – and this shows he might not be able to notice things.

I've taken on board Mr L's points and I realise this will be disappointing to him but it doesn't change my overall view on whether Mr L's mental health conditions led him to incorrectly enter the wrong cheque values for the reasons I've already explained. And I'm satisfied that Mr L misused his account.

Taking everything into account, I find that Clydesdale have met the burden of proof required by CIFAS to add the marker. So I'm not going to ask them to remove the CIFAS marker.

My final decision

My final decision is I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 October 2020.

Jeff Burch
Ombudsman