

The complaint

Mr N complains that Lloyds Bank PLC has registered a marker at CIFAS, the national fraud database, which is preventing him from opening an account elsewhere.

What happened

Mr N received a payment of £1,500 into his account at Lloyds on 27 August 2018 at 20:58. This was reported to Lloyds by the sender as being obtained fraudulently. Mr N transferred this money as part of a payment of £2,200 to an account at a different financial business the next day. He told Lloyds that this money was from his mother and was for university fees. As she is abroad and did not have a sterling account, she arranged for an official at her bank to send the money to Mr N. He has provided evidence of a payment made to that official in local currency and equivalent to £2,200 in sterling. Mr N had then put the money into a friend's account as he was saving for his student fees. He says that when he found out what happened he arranged to repay the £1,500.

Lloyds did not accept Mr N's explanation. He had been the recipient of fraudulent funds. It decided to close his account and it registered a marker with CIFAS.

Our investigator did not recommend that the complaint be upheld. He said that the bar for adding a marker was a high one. And that Lloyds must have more than a suspicion or concern. He considered further information from Mr N including evidence about previous transfers he said his mother had made in the same way, personal details about her and the actions she had taken abroad to report what happened, social media exchanges, and details of the account to which he had sent the money. Mr N said his mother had given his account details to bank officials and that he had not allowed them to be used by or sold to anyone.

Our investigator said that:

- The payments making up the £2,200 (£1,500 and £700) had been received separately and had a reference of different payee names that he didn't think Mr N would have expected and ought to have questioned.
- Mr N had provided a bill payment authority for the £700 payment signed by the payee which he said had been obtained following the local police investigation abroad. It was right to say that this had not been reported as fraudulent although Mr N never seemed to have considered that possibility and it was unclear how he had been able to get this authority.
- The relevant social media exchange with the person Mr N says is his mother starts on 28 August 2018 at 10:08 asking him to check his account for £1,500. He confirms at 14:38 that he has received it and asks, *'did u also send the £700'*. The answer is yes. At 15:16 Mr N transferred the money from his account. He provided evidence that his mother had transferred the equivalent money to the person he says arranged to send it abroad at 15:04.
- Mr N referred to previous payments he had received in the same way of £5,000 on 11 May 2018 and £1,400 on 31 July 2018. It was right that Mr N had transferred these to the same account he says was being operated for him by a friend to help him save up for fees. He has also provided evidence of payments again in local

currency made from his mother's account to recipient accounts locally to support the source of this money.

- The payment sent to Mr N on 11 May 2018 had followed such a local payment in its chronology. The second two were to a different account at the local bank and he thought it strange that those had preceded any evidence of his mother paying money. He analysed the exchange rates and thought the rate applied on 27 August 2018 would have been quite favourable to his mother if it corresponded to £2,200 in sterling.
- He did not think that Mr N was likely exchanging messages with his mother on social media taking into account how she addressed him, and the name given to him on the chat and which he explained was a nickname.

Mr N did not agree. He referred to evidence showing that the person who sent the money was his mother, that she had a well-paid stable job and had reported and pursued this fraud matter with the authorities locally. He insisted he did not know the £1,500 was fraudulent and wanted an ombudsman to review the complaint.

my provisional decision

I issued a provisional decision on 15 September 2020. I set out below what I said.

I explained that I wouldn't be able to say *exactly* what happened here and will be deciding the key issues on the basis of what is *most likely*. The evidence in this case is complex and as some of it originates from social media and from abroad it is difficult to verify and weigh.

I needed to consider whether the report to CIFAS was made fairly. On this point, Lloyds 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.

Mr N's explanation is that he was receiving money from abroad to help finance his studies. He was saving that in an account held by a friend and then used the money to pay his fees. The money from his mother was being sent to him by third parties because he thought they had access to sterling, and it was easier to send in this way. He was expecting money but had no idea that the £1,500 was fraudulently obtained. When he found out what happened he shows in documentation that the money was refunded abroad to his mother and then he paid it back to Lloyds.

So, I needed to decide whether or not Mr N reasonably knew at the time the money was fraudulent and intended to keep this for his benefit. In thinking about this the following are the most relevant points:

- Mr N has provided evidence he says establishes that it was his mother who was the legitimate source of the money, that he is genuinely her son and that she has a good and stable job. I had seen her details and her confirming to him in a social media video that she sent this money.
- Based on Mr N's account that his mother was sending the money this was in my view an unconventional arrangement. She paid two different bank officials, who she knew would arrange for the money to be sent on to Mr N. In the final payment she received an unusually favourable rate of exchange and the money was sent in two parts which to someone of her apparent financial standing may reasonably have seemed suspicious.
- Mr N was receiving money from third parties and did not have concerns about his bank details being given out.
- Having said all that there is a pattern of money being sent in this way. While the investigator has rightly identified some anomalies, it is right that out of the substantial

money sent only £1,500 was reported fraudulent and notably that did not include the £700 said to be part of the same payment. It does seem that was sent willingly.

- Mr N's explanation that he was putting this into an account to save for his studies is credible. All of the payments were largely untouched when the fraud was reported as shown in the bank statement of the friend. If he knew the £1,500 was fraudulent then he would also realise it would be easy to trace and retrieve there. His actions didn't strike me as being of someone who really knew how that payment was obtained. And he arranged to pay this back.
- Mr N has been able to obtain social media exchanges between an individual said to be at the bank and the victim of fraud. He also has the signed payment authority for the £700. There are two ways of interpreting this – either this shows knowledge of the fraud or as he says this came from the local police investigation.

In my view Mr N ought reasonably to have done more to establish all the payments he was receiving into his account were legitimate. And to have some general suspicions about the unknown names of the payees and, if true, the strange way the payments were sent which only seemed to be to avoid foreign exchange fees. On one hand his account of his approach to his finances was cautious - putting his own money out of reach to save for his studies. On the other his approach to his own account was less than careful. Clearly his direct receipt of fraudulent funds raises suspicion and places some onus on him to explain how that happened. There are aspects of his explanation that raise questions as set out but not in my mind such that I could find that at the time he received the money he thought it was fraudulent and tried to benefit from that. So, on balance although there is clear suspicion, I didn't think that the high bar for reporting this matter to CIFAS has been met.

Taking into account that the further information has come after Lloyds' own investigation and that this was a finely balanced decision, I said I wouldn't be asking it to do more than remove the CIFAS marker. I thought it was entitled to close his account and not to offer him banking facilities.

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.

Lloyds did not provide any further comments.

Mr N provided further correspondence including from his mother and local police reports. He maintained he is innocent and wanted the marker to be removed.

For the reasons I explained before it is difficult to verify and so put weight on such documents. And the issue is about Mr N and whether he reasonably knew the funds were fraudulent irrespective of who originally carried out the fraud. This further information does not change my assessment of the complaint either way and I am only making a finding about Mr N's involvement - not any other party.

Putting things right

I remain of the view that Mr N ought to have done more to establish that all the payments he was receiving were legitimate. And that his receipt of money in this way raises suspicion. However, that is not sufficient to meet the high bar for a CIFAS marker for the reasons I gave before. I see no reason to depart from my provisional decision.

My final decision

My decision is that I uphold this complaint and require Lloyds Bank PLC to remove the CIFAS and any other externally reported fraud marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 24 November 2020.

Michael Crewe
Ombudsman