

The complaint

Mr A complains that Bank of Scotland plc has unfairly registered a marker with CIFAS the national fraud database and was wrongly told he could visit a branch to resolve this.

What happened

Mr A says that he was concerned that there was fraud at a company he was involved with. And that money had been going missing. So, he accepts that he altered the bank details on invoices due from a client so that funds were paid into his personal account. He says his business partner contacted the client about the payments and told it that this was fraud. And so, this was reported as fraud by the client's bank to Bank of Scotland. It froze the accounts that had received the payments and told Mr A it would be closing his personal account. It registered a CIFAS marker.

Bank of Scotland maintains that this was appropriate. It hasn't received any evidence to show Mr A was entitled to the funds. But it accepts that it provided poor customer service as it told Mr A to visit a branch several times and gave him the impression that the blocks could then be removed. Bank of Scotland paid him £200.

Our investigator recommended that the complaint be upheld and the CIFAS marker removed and also that Mr A be paid an additional £100 in compensation for the inconvenience. Our investigator said that:

- He didn't think Bank of Scotland had done anything wrong in telling Mr A that it would be closing his account. The client hadn't retracted the fraud claim and it was entitled under the terms and conditions to close the account.
- There wasn't evidence that Mr A had made any use of the money for personal gain or intended to do so and was acting with criminal intent.
- He didn't think Bank of Scotland had taken into account what Mr A had said about why he had altered the invoices when applying the CIFAS marker.
- The high bar for reporting to CIFAS hadn't been met.
- Much of the distress and inconvenience that resulted was of Mr A's own making and amending the invoices in this way to divert money was unwise. So, he thought that only a further £100 compensation was warranted.

Bank of Scotland didn't agree. It didn't accept that Mr A had demonstrated that he was entitled to the funds or that he intended to use it to pay staff or company invoices as he claimed. When the payments had been received he had quickly transferred it on from his personal account. Regardless of his reasons for his actions this was fraudulent, and the client had refused to retract the fraud claim.

Mr A didn't agree that the compensation was sufficient for the distress he had been caused. He also didn't think he'd been given the required notice period for the closure of this account.

my provisional decision

I issued a provisional decision on this complaint on 15 October 2020. I set out below what I said.

I needed to consider whether the report to CIFAS was made fairly. On this point, Bank of Scotland 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 A explained that he was a partner/ director of the company involved here. I'd looked at the records about this at Companies House. These show that with two others he became a director of the company when it was incorporated in May 2019. And that each director was also the owner of a third share of that company. The records show that he resigned in July 2019 and then no longer had an ownership stake. I understood he has his own separate business, and which had an ongoing relationship with the client involved. But his capacity at the company here by November 2019 is unclear. Mr A says that he was expecting to be paid a salary of £3,000 a month but had only received £500 in two months. He says he suspected one of the remaining directors of fraud and that funds were being diverted.

Payments were due to the company from the client. Mr A accepts he altered the invoices. And that payments of £18,497.54 and £26,675.52 were paid instead into his personal account from the client on 1 November 2019. He moved the money on that day with the majority to a joint account. On 4 November 2019, having received the report of fraud those accounts were frozen by Bank of Scotland.

Mr A insists that he diverted the money to protect company funds. He says he has a solicitor involved in looking at the activity of the director he suspects. And that he intended to use the money for company purposes. Although he spoke to the client about what he'd done it wasn't persuaded to change the fraud claim. As I understood it all of the money was recovered and returned by Bank of Scotland.

I thought I could reasonably infer here that Mr A was in some sort of dispute with the other directors of the company especially given that he seemed to be removed from office and ownership relatively quickly. I couldn't resolve any such dispute in a complaint he makes about Bank of Scotland and where the company isn't a party. It may well be that the company owed him money and that he had genuine suspicions about the actions of the other directors.

I'd not seen anything other than his own testimony to support that he had any entitlement to the funds, or any ongoing rights to decide on how company funds ought to be dispersed. The only evidence I've seen shows that the company, not Mr A, was owed this money based on worksheets behind the invoiced amounts. The only person who says he was entitled to act in this way or to have this money is Mr A. It seems the only way he could get access to company funds was by falsifying invoices. It wasn't as if for example he'd explained to the client why he should have the money. He'd decided that he needed to divert the funds in a

way that neither the company nor the client knew or approved of or either at the time or later on.

I said that I thought these actions reasonably put an onus on Mr A to support what he was doing with some evidence. It's not enough to say that he was never able to use these funds. On his version of events he was attempting to do so. I wasn't clear from what I've seen he alerted any independent party, the relevant authorities or Bank of Scotland to explain his concerns or of what he intended to do about them. I thought he reasonably might have expected this would raise some difficult questions for him.

I understood why Bank of Scotland decided there were grounds to think that a fraud or financial crime had been committed. And I thought it most likely that Mr A intended to resolve and deal with what he claims was money he was owed in diverting these funds. And that was at time when he seemed to have no basis to bind the company.

I appreciated that Bank of Scotland accepts it mishandled dealing with this issue by wrongly directing Mr A to a branch and giving him the impression that the branch could remove the blocks on his account. Even if as he says it affected him properly explaining what he had done, he's now had a fair opportunity to do so during the investigation of this complaint. And although there is some confusion about how much notice of the account closure he had I thought it was fairly entitled to restrict and then close his account if it suspected fraud.

Bank of Scotland says that it applied the CIFAS marker because Mr A received fraudulent funds into his account. So, I looked at whether Bank of Scotland was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Bank of Scotland needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr A's account of events and the evidence Bank of Scotland has provided, I said I was satisfied for the reasons I'd given that Bank of Scotland had sufficient evidence for the CIFAS marker to be recorded. I didn't consider there is a reasonable basis to require it to do anything further including by paying any additional compensation.

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.

Bank of Scotland didn't respond to my provisional decision but based on its prior comments I know that this was in line with its own assessment.

Mr A said he didn't agree and provided some further evidence and comments. He confirmed some of what I'd inferred in my provisional assessment. He said that he was in dispute with the other two directors over money and his removal as a director and shareholder of the company. He said that this removal added to his suspicions of fraud. He went on to explain that he considered he had been colluded against and this affected his decision making and resulted in trust issues. He accepted much of what happened was of his own making and was a result of the stress and duress caused by "having my company stolen from under me" and meant he needed treatment for health problems.

Mr A has provided screen shots of what he says were social media chats with the other directors up to October 2019 he says showing he was still very much involved with the company. He no longer has access to company emails.

He has provided a letter from his legal representative to the company dated in October 2020 after my provisional decision. In this he says that the company owes his own company over £20,000 based on invoices issued in October 2019. He also claims that he was removed as director and shareholder in contravention of relevant legislation and asks for an unspecified settlement.

In conclusion Mr A says no crime was committed, all funds were returned, and none were used despite him having ample time to do so. There had never been any suspicious activity on his account over his lifetime, but he accepted why Bank of Scotland closed his account.

I've considered this carefully. Mr A was an established professional and company owner who quickly got into a dispute with his business associates. I don't doubt that this caused him as he says significant stress and financial concern even if that isn't evident in his day to day dealings with these associates in the messages. And I don't doubt things would have come to a head when he issued invoices (referred to by his legal representative) in October 2019 and which he says have still not been paid.

His reaction is what I am considering and whether there were grounds to think that this was dishonest. I'm afraid I remain of the view that a reasonable and objective person would think that altering company invoices to divert money to him personally was dishonest.

While he still maintains that he and his own company are legitimately owed this money, the only person who says that remains Mr A. He's not shown he's yet pursued any legal recovery action or reported what he says was fraud by a fellow director to the authorities. And the client who paid the money didn't withdraw the claim of fraud. I accept that with hindsight Mr A now views his actions as very unwise and regrettable on his part. But I find it difficult to accept as most likely that he wouldn't have kept this money which he thought was rightfully his if it hadn't been removed by Bank of Scotland. It's correct that he hasn't been prosecuted for any crime and that the money has been recovered. I'm only looking at the actions of Bank of Scotland here and won't be able to resolve any dispute Mr A has with the company and its directors over his entitlement to it. I think he may have grounds for some mitigating circumstances but the test here for the CIFAS marker is whether Bank of Scotland had sufficient grounds to report this to police and that the high bar had been reached.

Having carefully considered the evidence and comments I remain of the view that it had reasonable grounds to suspect a fraud or financial crime had been carried out or attempted. And that this was founded on the evidence it had and checks it made. It has paid Mr A some compensation for the confusion caused to him in branch. And so, I won't be asking it to do anything more and specifically to remove the CIFAS marker as Mr A wants. I fully understand that will be a very unwelcome conclusion for Mr A.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 December 2020.

Michael Crewe
Ombudsman