

The complaint

Mr M complains that Clydesdale Bank Plc trading as Yorkshire Bank unfairly recorded a marker at CIFAS the national fraud database.

What happened

Mr M contacted Yorkshire Bank in October 2018 when he found his bank account had been frozen. He says he knew nothing about an attempted fraudulent payment of over £9,000 into his account. He was told his account would be closed. He later found that Yorkshire Bank had registered the CIFAS marker and said that this was affecting his ability to start work. Mr M was unhappy then to be told that the marker would only be removed if he admitted a part in the fraud. He didn't make any such admission and referred his complaint to this service.

Yorkshire Bank says that it received a report of two attempts to pay in fraudulently obtained funds - each of over £9,000 - into Mr M's account. Mr M couldn't provide any explanation for this and so it decided to close his account. It considered it was appropriate for the CIFAS marker to be added. Yorkshire Bank confirmed that Mr M should never have been told it could remove the marker if he said he had been involved.

Our investigator didn't recommend that the complaint be upheld. He said that he considered that Mr M knew that the funds were due into his account as he attempted to use it on the day of the first payment. And that Yorkshire Bank had acted reasonably in closing the account and had grounds to add the marker.

Mr M didn't agree and wanted his complaint to be reviewed. His representative said that there was no concrete evidence he was involved. And that this was having a significant effect on his life now. Mr M maintained that he hadn't been approached by anyone and didn't agree to provide his account details and allow his account to be used in this way.

my provisional decision

I issued a provisional decision on this complaint on 21 October 2020. I said I was not intending to uphold it, but I wanted to explain my reasons why. I set out below what I said:

I said I needed to consider whether the report to CIFAS was made fairly. On this point, Yorkshire Bank 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 M says that his account was taken over and attempted to be used without his knowledge. Yorkshire Bank disagrees and says that he had allowed his account to be used for fraudulent activity. I thought the following areas are most relevant in reaching an assessment of what most likely happened:

- Mr M opened this account in July 2018. He paid in one cheque for £34 that day. And the next entry was a withdrawal of £30 from the account on 6 October 2018. He says

that he kept his card safely at home in a drawer and didn't carry this with him. He didn't report it had been lost and also told our investigator it hadn't been lost or stolen.

- On 10 October 2018 there was an attempt to pay in over £9,000 in fraudulent funds to his account. His account was blocked as a result that morning. I've listened to a call recording that evening when Mr M had called Yorkshire Bank saying his account had been blocked. He said he had tried to take out money and also that he had looked online and seen his account had been blocked.
- He later told this service that when he went to take out £30 from his account he wasn't able to. And that he saw a message about his account being blocked. He told this service he didn't have online banking.
- On 11 October 2018 he phoned Yorkshire Bank again. We don't have a recording of that call but it's not in dispute that Mr M told it that he knew nothing about the payment into his account. He does dispute saying that he was expecting wages of £1,000 into his account as he says he wasn't working at the time. Mr M told this service that he was being supported by family while at college.
- On 15 October 2018 a further attempt to pay over £9,000 of fraudulent funds into his account was made. On that day Mr M went to a branch and took out the remaining balance of just over £4 from his account.
- Mr M complained in August 2019 about the CIFAS marker. Yorkshire Bank accepts he was wrongly told by branch staff that if he admitted allowing his account to be used for fraud the marker would be removed. He didn't in any event do so although a member of branch staff believed he looked suspicious when discussing what happened.

I'd balanced all the factors here in reaching my provisional decision. There was no clear way in which the details for Mr M's account were compromised. The first record of him using his account to withdraw £30 was on 6 October 2018. He didn't report his card lost or stolen. There was then only £4 left in his account. But Mr M contacted Yorkshire Bank about his account being blocked saying he had tried to withdraw money. He's given a similar explanation to this service. But there was no money due into his account based on what he now says. And the actual withdrawal of £30 was made several days earlier. So, I did find it unlikely to be a coincidence that he would try and withdraw money and discover his account was blocked just at the time when an attempt had been made to pay in fraudulent funds. I noted that another attempt was made to pay in funds on 15 October 2018. Mr M then knew his account was blocked and was going to be closed. He only expected to be able to withdraw the remaining £4 that day.

To me the most likely explanation is that Mr M had provided his account details to someone else to allow it to be used. I thought he also expected there to be at least some funds in the account for him on 10 October 2018. And that he called Yorkshire Bank when there wasn't and having found that his account was blocked. I said that this all in my view makes him a witting participant in the attempted misuse of his account for fraudulent purposes. That doesn't mean he necessarily needed to know about the specifics of the attempted payments. But I was satisfied it's most likely that he had agreed to provide a means for that money to be withdrawn or moved on.

Yorkshire Bank says that it applied the CIFAS marker because Mr M received fraudulent funds into his account. So, I'd looked at whether Yorkshire Bank 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 Yorkshire Bank 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 M's account of events and the evidence Yorkshire Bank has provided, I said I was satisfied that Yorkshire Bank had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I'd taken into account the following reasons:

- I was satisfied that Mr M allowed his account to be used for purposes which he couldn't have thought would be legitimate.
- Attempts were made to pay in a significant amount of fraudulently obtained money to his account and Mr M says he was expecting to be able to withdraw money from his account at a time when the only legitimate money remaining was £4.
- Yorkshire Bank had grounds to believe that Mr M was a witting participant in the use of his account for fraudulent purposes and so froze and closed the account.

I knew Mr M will be very disappointed by my assessment and when I said that I currently agreed with our investigator about the outcome for the complaint. As I've given more detail about the background for my reasoning I've issued a provisional decision to allow him to provide any more evidence or comments about what I've said.

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.

Neither Mr M nor Yorkshire Bank made any comments about my provisional decision. As a result, I see no basis to depart from my findings there for the reasons I've already given.

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 M to accept or reject my decision before 31 December 2020.

Michael Crewe
Ombudsman