

The complaint

Mr H is unhappy that Aldermore Bank Plc loaded fraud markers against his name after he says he was the victim of fraud.

He's also unhappy with the length of time Aldermore took to investigate his concerns and that it didn't do more to advise him on how to resolve the issue.

What happened

In August 2019, Mr H made application for finance through a broker to Aldermore. As part of the application, Mr H produced statements from his bank account to Aldermore.

Following additional checks, Aldermore discovered that the bank statements provided had been falsified to show an inflated balance to that genuinely in the account at the time. Aldermore declined Mr H's application and loaded a marker against his name using the Cifas and National Hunter databases.

When Mr H became aware of this, he says he discovered that an employee at his company had been stealing money from the accounts where the statements had been produced. And as the employee didn't want to be discovered, he'd altered the statements provided to Mr H to avoid detection. Mr H dismissed the employee and supplied Aldermore with evidence to support this. Within the signed document, the employee admitted to the theft and alteration of statements. He also agreed a repayment plan with Mr H to return the funds he'd stolen. This document was signed with the employee's signature.

Aldermore looked into Mr H's claim, but after considering the evidence decided that the fraud marker loadings would remain. It said that there were sufficient discrepancies in the evidence to justify the markers in the circumstances; some of these include:

- The document supplied providing admission of guilt by the employee was of poor quality and contained a number of errors
- It questioned why an employee of Mr H would have unrestricted access to his personal bank account
- It couldn't understand why Mr H hadn't reported the fraudulent activity to his banking provider
- Mr H told it that he'd agreed a repayment plan with the employee of £400 per month in 18 instalments (£5200) but he'd alleged that only £4380 had been stolen

Mr H remained unhappy with Aldermore's handling of his claim. He said that he'd provided as much evidence as he could to disprove his involvement in the fraud and questioned what more he could do. He added that he'd provided signed documentary evidence to show a third-party's admission of guilt and he'd reported the matter to the police; to which he'd supplied the reference number and a letter. He also felt frustrated with Aldermore's delayed investigation, failure to respond to his communications within deadlines and lack of support in assisting him to rectify the issue and proving he was a victim himself. As Mr H remained unhappy, he brought his complaint to our service.

An Investigator at our service began looking into Mr H's concerns. During this investigation, Mr H supplied a signed affidavit from his former employee— signed in the presence of a legal representative—confirming that he'd stolen the funds from Mr H's account and had altered the banking documents to mask his wrongdoing. Upon presenting this to Aldermore for consideration, it made a decision to remove the Cifas marker the following day. It also downgraded the National Hunter marker from 'fraud' to 'inconsistency'.

Mr H remained unhappy with the way in which Aldermore dealt with his claim. He didn't think the initial Cifas loading was justified and wanted to be compensated for the damage this caused to his business, subsequent declined finance applications and impact on his personal health. He also remained unhappy with the way in which Aldermore handled his claim; such as the delays, poor communication and lack of support.

In addition to the complaint points already made, Mr H made further complaints regarding his discovery of the National Hunter marker placed against his name and that Aldermore had failed to respond adequately to a data subject access request.

After reviewing the evidence provided by both parties, the Investigator concluded that he didn't think Aldermore had made an error in its actions. He felt the initial Cifas loading was fair as it did adhere to the evidential standards expected by Cifas. He also agreed that that Aldermore's downgrading of the National Hunter marker from 'fraud' to 'inconsistency' was fair when considering the requirements set out by National Hunter. Whilst he acknowledged that complaints regarding data subject access requests were normally handled by the Information Commission's Office (ICO), he felt that Aldermore had adequately actioned the request. But if there was any further information Aldermore held, he said it should go ahead and disclose the information.

Mr H was unhappy with the Investigator's assessment of the complaint. He said:

- He wasn't satisfied that Aldermore fulfilled the Cifas burden of proof throughout its investigation.
- The narrative hadn't changed up until, and at the point of, submitting a signed affidavit, meaning that the Cifas marker was an inaccurate representation.
- The Investigator hadn't addressed the distress and inconvenience caused.
- It had been ignored that Mr H had reported the matter to Action Fraud and the Police. He also failed to recognise that Mr H had fulfilled his legal obligation as an employer to terminate the employment of the perpetrator for gross misconduct.
- There was no reference to Mr H's submissions of the perpetrator's bad character provided in newspaper reports of his previous fraudulent conduct.
- Despite admissions by Aldermore that it'd mistakenly closed Mr H's complaint, the Investigator hadn't addressed the intentional frustration of matters and delay.
- He was unhappy that reference had been made to the account being a personal account and that Mr H had allowed an unnamed account holder access to it. Mr H said that he was a sole trader and that it was imperative that he allow his staff access to the account.
- He remained unhappy with the National Hunter loading despite him proving his innocence. He made submission that this continued to have a negative impact on his financial affairs unjustly.

As Mr H remained unhappy with the Investigator's findings, the matter has been passed to me for a final decision.

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.

Mr H remains unhappy with the reasons the original Cifas loading was applied against his name as he feels he adequately evidenced he was a victim of a fraud himself. So, I must first consider if Aldermore's application of the marker was fair in the circumstances.

For Aldermore to apply a marker against Mr H's name to the Cifas database, it's required to operate within the terms of the National Fraud Database Handbook. Within the handbook, it sets out that members can only record information with Cifas if it's supported by evidence and meets the 'four pillars' burden of proof; namely:

- That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted;
- That the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police;

It's accepted by all parties that the document supplied was falsified—and this was verified through the financial business where the statement was purported to have originated. As such, the first 'pillar' has been met in that Aldermore had reasonable grounds to believe a fraud had been committed or attempted. But Mr H has pointed out that this was done so unknowingly as the falsified document had been supplied to him by an employee.

The second 'pillar' requires that the member—in this case Aldermore—has sufficient evidence to report the specific conduct of the subject—in this case Mr H—to the police. In basic terms, Aldermore has to be satisfied that Mr H himself is responsible for the conduct, and it must have clear, relevant and rigorous evidence to support this.

Mr H provided a signed confession and letter of misconduct proceedings against his former employee. However, Aldermore didn't deem this to be sufficient in the circumstances. It felt that the information contained in the document couldn't be verified as legitimate, there were discrepancies and errors held within the document that further undermined its legitimacy, and it was suspicious as to why Mr H had allowed an employee access to his personal accounts.

While I sympathise with Mr H's situation, I don't find Aldermore's assessment of these facts to be unreasonable. Mr H clearly found it difficult to prove beyond what he'd provided that he was in fact a victim of fraud himself. He felt that the admission and dismissal of the alleged culprit, and evidence to support this, was sufficient to prove his innocence. But I find it reasonable that Aldermore be suspicious of unverifiable documentary evidence provided by the person alleged to have been party to the conduct. I don't necessarily feel that the errors in the document were sufficient to decline Mr H's claims, but there were other reasons given by Aldermore to support its decision to retain the marker.

I acknowledge that allowing unrestricted access to a personal account in Mr H's name does present a difficult position for both parties. Mr H says that this was necessary as a sole trader to run his business. But as the employee wasn't an account holder or signatory on the account, Mr H is unable to evidence that the employee is the person responsible for the download and amendment of the fraudulent statements. However, I find it reasonable for Aldermore to give weight to this fact considering that it is unusual, and generally against the terms and conditions of an account, to allow a third-party access. I can also see that the account appears to be a personal account rather than a business account.

Mr H has also pointed out that he reported the matter to Action Fraud, which he says proves he took the matter seriously and was innocent. But evidence submitted to our service shows that the matter wasn't taken any further following reporting. I acknowledge that law

enforcement may have decided not to take things further due to its own internal procedures, but this does appear unusual considering the alleged culprit was a named individual, had previous bad character and there were viable lines of enquiry to pursue. I'm also conscious that Mr H had a repayment plan in place with his former employee and may not have wanted to pursue matters as a result of the agreement reached. But I can understand why this further added to Aldermore's reasoning for retaining the marker.

In addition to the above, Aldermore contacted Mr H's banking provider to ask if the fraudulent use of his account had been reported. Having seen the correspondence between Aldermore and the banking provider, this clearly indicates that Mr H hadn't reported the funds removed from his account or the issue of statements being downloaded and amended by the employee. Having said this, I understand the points Mr H has made to explain this. He's pointed out that a repayment plan was agreed with the employee, and he'd changed the information required to access his account so that further access would be denied. But it must be acknowledged that this—as well as other factors covered above—gave Aldermore sufficient grounds to fulfil the burden of proof set out by Cifas.

Again, I sympathise with Mr H's position. He provided as much as he felt he could in the circumstances, including some articles regarding the employee's previous bad character, a letter of dismissal/admission and reported the matter to Action Fraud. But the reasoning behind Aldermore's decision to retain the marker is reasonable for the reasons I've set out above. Mr H has submitted that Aldermore could have done more to help him understand what he needed to provide to prove he was a victim himself, but that isn't Aldermore's role. My findings set out if Aldermore was fair in its placing of the marker against his name, and in the circumstances of this complaint, I find that it was. As such, I can't consider any impact the marker had on Mr H when it was applied as I find it was applied fairly in the circumstances. I also find the original National Hunter loading to be fair for the reasons I've set out above.

Mr H is also unhappy with Aldermore's handling of his claim and subsequent complaint. He felt that Aldermore were obstructive and caused unnecessary delays to the investigation into his claims.

Having looked at the evidence provided by both parties, there appears to be a gap of circa two months between Mr H's legal representative registering a claim against Aldermore and his complaint being brought to our service. Without breaking down the communication between both parties—and when considering the Christmas and New Year holiday period—I don't find this to be an unreasonable time in which to investigate a claim. I can see that Aldermore requested further documentation to support Mr H's testimony, and after this was received, Aldermore responded to Mr H's representative highlighting its decision to retain the marker.

Aldermore has said that it treated the representative's letters as pre-action to civil court proceedings as it was coming from a solicitor. I'm not sure why it interpreted these correspondences in such a way considering that the solicitor was initially questioning the validity of the marker rather than setting out an intention to pursue court proceedings, nevertheless, I don't think this error caused a significant and unnecessary delay to the investigation. Nor do I think it would have impacted the marker placed against Mr H's name.

I've also considered Mr H's claim that Aldermore obstructed his—and his representative's—efforts to rectify issues by not allowing direct communication with its legal department. It's not our role to tell a business how it should or shouldn't communicate with its customers, but Mr H and his representative did have an open line of communication with the business and its legal team; albeit not directly. I don't find this to be unreasonable as Aldermore are entitled to decide how its legal team communicates with its customers. I understand Mr H's

frustrations with it not being direct, but I don't find this to be unreasonable.

During the investigation carried out by our service, Mr H's representative disclosed a signed affidavit by Mr H's former employee admitting to the fabrication of the statements. This was signed in the presence of a solicitor. Following disclosure of this to Aldermore, it made the decision to remove the Cifas loading and downgrade the National Hunter marker to an 'inconsistency'.

While Mr H was happy that the Cifas loading was removed, he was unhappy that this was accepted over the signed admission and dismissal letter provided previously. But this document was different in that it had been verified independently in the presence of a third-party solicitor. So, I can understand why Aldermore placed more weight on this document over the one he'd provided previously, and when considering the other discrepancies I've already covered above.

Mr H is also unhappy that despite accepting this evidence, Aldermore has still failed to remove all markers from the National Hunter database. He's also claimed that this marker remaining on his file continues to impact his ability to receive financial products.

According to National Hunter guidance, inconsistency markers are allowed to be recorded in cases where information provided by the consumer doesn't match information found by the recording business. As that has been the case here, and there is no dispute in this fact, this marker has been applied in line with the guidance and is fair in the circumstances.

Mr H has told our service that this marker continues to affect his ability to obtain financial products, but from the information provided I'm not persuaded that this is the case. National Hunter guidance on inconsistency markers states that *'no case can be declined based on a National Hunter match alone and the member must investigate their own case in full'*. Therefore, a declined application on this basis would be a matter for the declining business to answer rather than Aldermore. I've also looked at the communication provided by Mr H where he has claimed to have an application declined as a result of the inconsistency marker. Unfortunately, this doesn't give the specific reason(s) for decline. So overall I'm satisfied that the National Hunter marker hasn't impacted him in the way he's claimed.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 September 2021.

Stephen Westlake
Ombudsman