

The complaint

Mr W has complained that Starling Bank Limited recorded a marker against him at CIFAS, the national fraud database.

What happened

In 2019, Mr W received a number of payments into his Starling account from three different senders at three different banks. He sent this money onto a prepaid currency card. Each of the sending banks then reported the payments as fraudulent.

Mr W told Starling that the payments were from an old friend who he'd once lent money to and had happened to run into again. He's said that all the accounts involved actually belonged to that one person. He's said the friend was helping him pay off a loan, but then he'd decided to use the money to book a holiday, but then he didn't actually book the holiday. He said he'd then loaded the money onto the currency card as spending money for the holiday he hadn't booked, but also intended to use it to buy gifts for his family. But he then said he gave the currency card away instead. Mr W explained he had no evidence he knew this person, or that he'd ever lent him money. He said he couldn't show they'd ever spoken as he'd only talked to him using someone else's phone, and in any case they'd both happened to change phones since and so were unable to contact each other.

Starling gave Mr W notice that they were closing his account, and they registered a fraud marker with CIFAS. He complained.

Our investigator looked into things independently and didn't uphold the complaint. They found that Mr W had received multiple fraudulent payments and then spent the money. They felt it was fair that Starling had closed the account and registered the marker.

Mr W didn't agree, so the complaint was passed to me to decide.

I sent Mr W and Starling a provisional decision on 9 February 2021, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to register this marker, Starling were not required to prove beyond reasonable doubt that Mr W had done something wrong. Instead, they had to have reasonable grounds to believe he'd misused his facility, beyond a suspicion or concern, with appropriate evidence to support this. Having carefully considered everything that both sides have provided, I currently think that Starling did have sufficient grounds to register the marker. I'll explain.

The payments in dispute were received into Mr W's account and then forwarded on to a prepaid currency card. From what I can see, this was authenticated with Mr W's phone, using his fingerprint and passcode. No other devices were registered to the account and no one else appears to have had access other than Mr W. And Mr W has admitted to receiving and forwarding on the payments. So I'm satisfied this was all done with his knowledge and consent.

Three different banks have confirmed that the funds Mr W received and spent were fraudulent. I can see that something similar has happened on one of Mr W's other accounts as well.

There does not appear to be any evidence which substantiates Mr W's versions of events. He has not been able to provide any evidence that he knew the senders, or that he lent them money, or that he was entitled to receive these funds. He couldn't provide anything to indicate that they'd ever communicated before, such as texts, calls, emails, or social media history, despite saying they were old friends, colleagues and neighbours. He's been unable to evidence the things he says he spent the money on and declined to provide statements for the currency card when asked.

Indeed, what Mr W has told us often contradicts the evidence at hand. For example, he says that all these senders were the same person, but they were different people from different banks in different places. He says one of the accounts is his friend's limited company, but that's not the case. He even describes senders as the wrong gender. This certainly does not support his assertions that he knew these people.

Each of the senders had very similar stories about how they'd been defrauded into sending Mr W money. They separately sent him money using the same reference, which fits with their descriptions of the fraud. These funds were confirmed as fraudulent by three different banks. There isn't a likely way that someone could've done this without Mr W's permission, and in any case he has admitted to receiving and spending this money. I can't see any significant evidence which substantiates his versions of events, and what he's told us doesn't fit with what happened.

So based on what I've seen so far, I think Starling acted fairly in registering the marker. This is a difficult message for me to give, and I know it's a difficult message for Mr W to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

It follows that I also currently think it was reasonable that Starling closed Mr W's account. I can see that they did this within the terms and conditions of his account.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 9 March 2021. Starling had nothing further to add. Mr W made some further comments, which I'll talk through below.

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 W explained that he didn't know the funds were fraudulent, and this was all his old friend's fault. But I'm afraid there's no evidence to substantiate that this friend ever existed, or that Mr W ever knew him, or that the friend was in any way involved with what happened here. Whereas, as I explained in the provisional decision, there is substantial evidence that Mr W took in and spent fraudulent funds. It also doesn't seem at all plausible or likely that this old friend would commit fraud just to give someone else all the profits, and without that other person knowing what was going on.

I do understand Mr W's point that he originally only knew this friend some years ago. But given their apparently comprehensive relationship – for example being not just friends but colleagues and neighbours too; and given that they were supposedly in contact in December 2019 and sorting out money matters together at the time, I would have expected Mr W to be able to provide substantial evidence that he actually knew this person.

Mr W has now provided a phone number, saying we can use it to contact the old friend. It's unclear where this number came from as his previous testimony was that the friend changed numbers and was uncontactable. In any case, this latest phone number does not appear to be related to this case.

Mr W explained he'd been able to get another CIFAS marker removed. That may be the case, but I'm satisfied that *this* marker was added with sufficient grounds.

Mr W said he was more than willing to state his case in court. This service isn't a court, but if he rejects my final decision then his legal rights won't be affected – so Mr W will still be able to take Starling to court if he wishes. Though it would be advisable for him to seek qualified legal advice about that route beforehand.

Mr W expressed his concerns with the way the system worked in general. We only look at individual complaints here at the Financial Ombudsman Service, so I'm not best placed to address his more general comments. The regulator – the Financial Conduct Authority, or FCA for short – looks at the way things work more widely. And if Mr W wants, he can get in contact with them to give his comments – though I should explain that they won't normally comment on individual cases.

Lastly, Mr W asked that we take greater account of his side of the story. I hope I can reassure him that I have looked carefully at everything he's said, and I've thought carefully about all his points. But the fact remains that his versions of events are not supported by any substantive evidence, are self-contradicting at points, and are contradicted by the substantial evidence we do have. And ultimately, I'm satisfied that the senders were defrauded into sending Mr W money, and that he received and spent these fraudulent funds.

So having reconsidered the case, I conclude that Starling acted fairly and reasonably in registering this marker and closing the account.

My final decision

For the reasons I explained above and in my provisional decision, I don't uphold Mr W's complaint in this particular case.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 April 2021.

Adam Charles
Ombudsman