

## The complaint

Mr C complains that Lloyds Bank PLC has unfairly recorded a marker at CIFAS, the national fraud database.

## What happened

Mr C had an account with Lloyds. In 2017 it decided to close his account and issued a final response about that dated 12 May 2017. Mr C now complains that it then registered the marker and says that this is preventing him obtaining an account elsewhere. He says Lloyds didn't investigate this properly and let him explain at the time. It has sold the debt on his account and the marker should no longer be recorded

Lloyds said it wouldn't be removing the marker. Between 25 October 2016 and 2 May 2017 Mr C had raised 45 chargeback claims for multiple transactions using his debit card. It received evidence that payments were genuine from a number of merchants and re-debited the amounts to his account. It decided that Mr C had made fraudulent claims and added the marker. Lloyds doesn't retain the chargeback responses after six months. It had offered him £100 for not providing clear information about this when he called it on 2 June 2020.

Our investigator didn't recommend that Lloyds do anything more. Mr C told him he was getting confused at the time about the number of debits to his account and that he was gambling and didn't recognise all the transactions. Mr C said that Lloyds' response didn't explain its investigation and that he should have been given the opportunity to explain his version of events.

One of the merchants against which chargebacks had been raised was a gambling website. Lloyds had recorded that the merchant had provided evidence at the time linking Mr C to the account and had provided copies of his identification. Mr C had been under the impression that only this merchant had challenged the payments, but Lloyds had also received evidence from other merchants and which for example also confirmed the delivery of clothing to his address. Mr C hadn't directly disputed the decision to hold him liable for the claims and our investigator said that he understood the transactions to be genuine ones. So, it wasn't clear what Mr C would have wanted to challenge about them.

Our investigator said he'd seen the volume of chargebacks initially refunded and then re-debited to Mr C's account. The specific evidence Lloyds received about them at the time wasn't now available. But he thought it reasonable that Mr C be more mindful of the activity on his account especially after the first few chargebacks. But there were 45 separate chargeback claims covering a much larger quantity of individual transactions – up to 250. So, he didn't think Mr C was reasonably unaware of all of these. And he thought that Mr C knew in advance that these weren't genuine claims. Even though Lloyds had sold the debt on it had added the marker and so it should still show in this way at CIFAS.

It was clear Mr C hadn't received good service on 2 June 2020, and our investigator thought that the compensation offered for this was reasonable.

Mr C didn't agree and wanted his complaint to be reviewed. There was now no evidence from the merchants. He repeated that he hadn't had the chance to put his side and challenge what the merchants had said. Lloyds hadn't carried out a fair investigation when it decided to add the marker and he didn't think it should be allowed to retain it. Mr C hadn't kept the money so he didn't see how this could be considered as fraud and the threshold for adding the marker met. He took objection to comments that Lloyds had made internally and which he had seen from a SAR stating that he was on benefits and using the disputes process to fund his lifestyle. It should have contacted the police, so he would be interviewed at the time. And as the debt involved had been sold on Lloyds should no longer be reporting the marker anyway.

### **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.

I need 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.

Lloyds has provided a summary showing that there were 45 separate chargeback dispute references covering 250 transactions and a total balance of £17,605 over a period spanning October 2016 to May 2017. The statement of Mr C's account provided shows it was being used actively during the period and that there were pay-out credits from the gambling company involved – coming to a total during the period of £11,300 and which weren't disputed. Those credits were followed by withdrawals including using cashpoints.

The information shows that Lloyds processed the chargebacks and I think Mr C has now seen from his SAR response Lloyds' summary of what merchants involved said. He was clearly aware of the re-debit of these amounts. When his account was closed he had an overdrawn balance of over £4,400 as a result and he has provided information from the third party who took over the debt showing that in July 2019 he still owed this amount.

Our investigator has gained the clear impression from Mr C that he isn't disputing these payments and wrote to Mr C on 22 March 2021 saying, *"as we discussed the chargeback claims were raised as genuine mistakes and you now understand the transactions to be most likely genuine"*. That corresponds with what Mr C said on his complaint form to this service which was that *"there were a number of chargebacks raised that I thought were legitimate to my account. I was getting confused as in relation to how many times I was being debited etc. I innocently raised disputes and the companies came back to Lloyds and said that they were fraudulent. I had not way of disputing this because the bank made the decision to close my account."*

The companies involved were being asked as part of the chargeback process to provide evidence to support the transactions being genuine. It was a matter for Lloyds to decide on Mr C's intent in raising the chargebacks. The record Lloyds made of what it received in response seems factual based on the evidence held – not that for example the gambling company said that Mr C acted fraudulently. So, I am unclear what difference it would have made if Mr C had seen any direct response. What is clear though is the number of chargeback requests made.

I find this most likely beyond any reasonable pattern of genuine mistakes or confusion. Mr C clearly knew Lloyds' practice was to refund the payments while the chargeback was being considered. And the final result of all the chargeback re-debits was it can be said the

overdraft balance. Frankly, I don't accept as plausible that Mr C having authorised these payments then made so many genuine and continuing mistakes about them.

I will consider the alternative though which is that Mr C might maintain that he didn't make some or all of the payments. He hasn't provided an explanation for how that happened over a significant period from his account and with different merchants including the gambling company. Again, I'm not persuaded this is a plausible explanation given the sheer volume of claims. And that's especially given the ongoing debt that resulted and remained for him - even though he had complained about his account being closed. So again, I don't think that the relative lack of information about the chargebacks now makes a difference.

It does seem in any event that his main issue is with the CIFAS marker itself. And that doesn't have to relate to successful fraud but where there are grounds to believe it has been attempted too. In my view the weight and volume of chargeback claims is the important evidence here in itself. There is also a lack of any specific evidence to suggest that these were genuine chargeback claims, a lack of any plausible explanation either that they could be such and it seems Mr C's acceptance that they were genuine. This means that there were grounds to think that he had attempted to benefit from making so many false claims. I don't see any other likely explanation here. That wasn't something Lloyds was required to report to police at the time. He has now had the opportunity to present his comments about this marker and I am reviewing whether in light of those it was reasonable for it to be added.

Lloyds says that it applied the CIFAS marker because Mr C made multiple fraudulent chargebacks. So, I've looked at whether Lloyds 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 Lloyds 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 or attempted, rather than mere suspicion.

Having reviewed Mr C's account of events and the evidence Lloyds has provided, I'm satisfied that Lloyds had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr C made multiple chargeback claims not reasonably thinking these were genuine and received refunds and which when re-debited contributed to borrowing on overdraft.
- Lloyds had grounds to believe that Mr C had attempted to obtain funds back fraudulently based on the evidence it had.
- There is no other reasonable and most likely explanation for Mr C's actions over this period.

I appreciate he will be disappointed by my conclusions about the marker. There was also no requirement for Lloyds to remove or alter the marker when it sold the debt as it was responsible for raising it. Lloyds has paid Mr C £100 for poor communication and I don't have a reasonable basis to require it to do anything more.

## **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 C to accept or reject my decision before 1 June 2021.

Michael Crewe  
**Ombudsman**