

The complaint

Mr O complains that Starling Bank Limited loaded a CIFAS marker against him on the National Fraud Database. He'd like the marker removed and compensation for the impact caused to him.

What happened

In April 2020 Starling received notification from another bank, I'll call B, that Mr O received fraudulent funds into his account. The report stated that B's customer had attempted to buy a game via an online site I'll call F. They'd paid Mr O's account but then couldn't get hold of him and the account they'd bought the game from had been deleted.

Starling restricted access to Mr O's account and carried out a review. They contacted Mr O and he explained he was selling computer games online via F. He explained to the bank he'd hadn't been able to purchase the games because of his account restriction. During the account restriction Starling received several other reports of fraudulent funds entering his account.

Starling didn't accept Mr O's explanation and decided to close his account and load a CIFAS marker for misuse of facility on the national fraud database.

Mr O complained to Starling about their decision. The bank reviewed his complaint but didn't change their position. And refused to remove the CIFAS marker.

Mr O didn't accept Starling's response so complained to our service. He also complained that he had around £400 in his account at the time of closing and he wanted to know if this would be returned.

On contacting our service Mr O explained he'd been carrying out 'drop shipping' where he didn't have possession of the computer games, however on receiving the funds from the buyer he'd purchase the product from wholesalers then the goods would be sent directly on to them. And because of the account restriction he'd been unable to purchase the games or post them on. Mr O also explained that he'd previously been using the post office to dispatch games, prior to Coronavirus, however due to concerns about the virus he thought it would be sensible to limit his visits to the store.

Mr O also provided evidence of conversations he'd had with some of the buyers, most of whom he explained where understanding that he was unable to post the games due to Coronavirus and his account restriction. And statements from friends who explained that Mr O didn't have any history of fraudulent activity, was an honest and genuine individual and they'd given him a few computer games to sell.

One of our investigators looked into Mr O's case. They asked Mr O some more questions about how he'd obtained the games, and he explained he'd purchased some from charity shops, received some from friends and he was going to obtain more from drop shipping.

They thought that Starling didn't have sufficient evidence to load the CIFAS marker – and recommended it was removed.

Starling didn't accept our investigator's conclusions. In response they said:

- A large online retailer was only able to sell games at £35 whereas Mr O was selling them for £20. There's no evidence of how he could sell the goods at this price.
- His sole trader account was 3 months old
- There's no evidence that anyone received items from Mr O

A second investigator looked into Mr O's case, and reached a different conclusion. Overall they didn't think that Starling had acted unfairly. In summary our investigator concluded that Starling had acted in line with its legal and regulatory obligations when closing Mr O's account and holding on to his funds. He also thought that Starling had acted fairly in loading the CIFAS marker highlighting Mr O's failure to provide any evidence that he'd purchased the games he was selling or had possession of any of them. Or how he was able to make a profit when selling them at £20.

Mr O didn't accept our investigator's conclusions. In summary he said:

- He's provided evidence that he had physical copies of the computer games he was selling.
- He never advised Starling that he was buying all of the games via 'drop shipping'.
- He explained to Starling that he was buying the games online because this was the easiest way to inform them – however he had many ways of getting the games including from free via friends and charity shops. This is how he could also sell the games so cheaply.
- Why would he contact the buyers to tell them of his account restriction if he'd acted fraudulently?
- If he was acting fraudulently why would he refund some of the buyers?
- Before the account was blocked he didn't think he'd have any problems in shipping the games to the buyers. The pandemic had just started and he thought people would understand a small delay in the games arriving.

As Mr O didn't accept our investigator's conclusion it's been passed to me to decide.

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.

Account restriction and returning of funds to source

In response to our second investigators view Mr O explained that he's not interested in complaining about Starling's decision to close his bank account or retain his funds, plus the withholding and returning of his funds. So I won't be considering these complaint points. Instead I'll be considering whether Starling acted fairly in loading a CIFAS marker against Mr O.

Loading of the CIFAS marker:

Our investigator outlined the level of evidence required for Starling to load a CIFAS marker – so I won't repeat this in detail. In summary Starling need to evidence that there are *reasonable grounds* to believe that an identified financial crime has been committed or

attempted and they have *clear, relevant and rigorous* evidence. And that Mr O is *complicit* in the fraud.

It's my role to assess whether Starling have sufficient evidence to meet this standard of proof. And having done so I'm satisfied that they have. I'll explain why below:

- Mr O received his first orders for four games, of a game I'll call Z, on the 20 March 2020. However, he's been unable to provide evidence to show that any of the games purchased from him were dispatched. Mr O initially explained to Starling that he was unable to post the games due to his account restriction and that he didn't dispatch them due to the pandemic. However, Mr O's account wasn't restricted until the 10 April 2021 which I'm satisfied gave Mr O sufficient time, even during the pandemic, to post the games.
- I've looked at Mr O's bank statement since the 20 March 2020 and there's evidence he visited a restaurant, supermarkets and cash points following the sales indicating he visiting local amenities. So I think it's likely Mr O could have visited the post office to dispatch the games.
- Mr O's provided a variety of explanations for how he was going to obtain the games. Initially he advised Starling that he was going to obtain the games via drop shipping which he wasn't able to do due to the account restriction. But Mr O has been unable to provide any details of his drop shipping account.
- Mr O has since provided a number of other explanations for how he'd already obtained and planned to get hold of the games, including through charity shops and friends. I find it surprising that Mr O has been so inconsistent in his explanation for how he's managed to obtain the games. I've also look at Mr O's bank statement prior to the 20 March 2020 and I can't see any evidence of purchases from charity shops.
- Even if I accept that the majority of Mr O's games were given to him freely or he purchased them from charity shops for small amounts of money, I still need to understand if it's likely that Mr O could purchase other games for such low prices using 'drop shipping'. And if he couldn't do so why Mr O would sell them on at such low prices. Mr O hasn't provided any evidence of where he was buying the games from at such low prices.
- Mr O has provided evidence of messages he had with buyers about his account restriction – however all the conversations are after the initial reports were received by Starling and Mr O's account was restricted. Mr O advised our service he was waiting to send out the games in bulk, because of the pandemic, however he's not provided any evidence demonstrating that he informed his buyers about the planned delay.
- I've seen no evidence that Mr O's drop shipping account exists or he'd placed orders for the games. In fact, Mr O initially informed Starling that he was going to purchase the games, via drop shipping, from a website he now accepts he set up.
- Mr O's argued that he's provided evidence he had physical copies of the games he was selling – however I'm afraid I don't agree that the evidence he's provided shows this. The majority of the funds Mr O received prior to the account restriction indicated the buyers thought they were buying the game Z. However, in the photos Mr O's shared I've only seen one photo of game Z.

In conclusion I'm satisfied that Starling have sufficient evidence to meet the standard of proof to load a CIFAS marker. For this reason I won't be asking Starling to do anything further.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 23 September 2021.

Jeff Burch
Ombudsman