

The complaint

Mr B complains that Starling Bank Limited has registered a marker about him at CIFAS, the national fraud database.

What happened

Mr B was contacted by Starling Bank to provide information about the source of some payments he received into his account on 16 and 17 December 2020. He said these were received for a friend and later provided some screenshots from social media to support this. He doesn't think that the marker was recorded fairly as he had no idea these payments were fraudulently obtained. And this is affecting his ability to obtain an account elsewhere and receive student finance.

Starling Bank said it had received reports from other businesses that money that had been paid into Mr B's account was fraudulent. This had quickly been transferred out. When it first asked him for information about this he said he was abroad and with the friend involved so things were agreed verbally. It was only after his account was closed and he challenged the CIFAS marker that he provided the screenshots. But when it received them in January 2021 they were marked as taking place 'today' not in December 2020 and there was no other evidence.

Our investigator didn't recommend that the complaint be upheld. He said that the bar for adding a marker is a high one. And he had considered Mr B's explanation of what happened. Mr B said that the friend was someone who'd helped him before. And Mr B had been on holiday this time when he was contacted and had agreed to help his friend. He had agreed to pay his friend in cash and so had used the money himself because he saw it as his. Mr B said that when first contacted by Starling Bank he hadn't realised the seriousness of the situation. He said that the screenshots for Starling Bank were ones he'd taken on that day as he often did this with important conversations, and he denies taking it on the date he handed it to Starling Bank in January 2021.

Our investigator had considered an expanded set of screenshots from Mr B including these messages and now dated 16 and 17 December 2021. He knew Mr B had explained that time differences could affect the timings. But he noted that there was a discrepancy in the minutes recorded for some of the comparable entries and that a change in time zones wouldn't be an explanation for that. He also noted that Mr B had moved money out of his account long before there had been any reference to this being the arrangement taking account of any possible time differences. And Mr B had also received and moved other money on before the time his friend had even told him more payments would be coming. Although Mr B had said there had been a separate conversation on a social media app that couldn't capture messages he didn't have any evidence to support that. And the tone of the messages he had provided indicated that this was the first time that this had been discussed. Mr B had said he had a medical condition that affected his ability to make decisions. It was right that he had recently accessed treatment, but he hadn't provided any evidence of this at the time to Starling Bank or that this then led to a lapse of judgement.

Mr B didn't agree and wanted his complaint to be reviewed. He said that our investigator was biased and was never going to help him. He had sent Starling Bank the same screenshots we'd had, and the difference must be due to multiple time zones and minutes being wrong on his phone clock. We hadn't taken into account that some information can't be accessed after a period and especially when a contact has been blocked. He went on to say that he had been placed under duress by this former friend and was dealing with a lot of health issues. He offered to repay the money involved if the marker was removed and he referred to similar complaints this service has dealt with where the outcome has been different.

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, Starling 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. I will be looking as I say at the detailed individual circumstances of this complaint which will differ to others this service has looked at and I also apply my own judgement here.

The investigator has set out the background and I've looked at what has been provided. I can see that having been asked about money received Mr B wrote on 20 December 2020 to Starling Bank to say that as he had already explained his friend *"was with me when he asked me and it was a verbal agreement, to which I asked no questions and did what he asked..."* and that *"I have no documents as it's nothing to do with me and I trusted him to complete his end of the bargain...I have given you all the information that I have."* He later went on to confirm that was the position on 22 December 2020 too when he said that to his knowledge his account of what had happened was *"legal and plausible"*.

I'm afraid I don't think it's credible for him to say that he didn't realise the seriousness of what was involved and so not to provide copies of screenshots. His position now is that he already taken the screenshots which explains why they had been marked 'Today' when sent. And I can understand why Starling Bank was sceptical about this information when it was later sent in. I have considered what he said about his health, but I don't see any established link to his behaviour and decisions at that time.

I have looked closely at the expanded run of screenshots he's sent to this service which as he says include all lines of the chat sent to Starling Bank. If I put aside possible issues with the times in minutes and accept these at face value as being what Mr B says they are then I still agree with our investigator that these don't support his version of events. He had clearly quickly moved this money from his account to buy trainers, he says, and deposit money in his account at a different financial business before any agreement that he would be paying his friend in cash. And he had moved money relating to the second and third payments before being told that these were coming. I appreciate he says that there were other conversations to support what happened but without seeing that I can't put weight on this. And it does seem to me too that the nature of the exchange was that this was the first time it had been agreed. The first reference to this is timed at 17:09 on 17 December 2020 when Mr B having offered then to transfer the money agrees to pay cash when he is back from holiday. That's also around the time his friend refers to other payments coming in which even accounting for the time difference had already been both received and transferred on.

Mr B says when he returned from holiday on 23 December 2020 he was tired and wanted to provide the cash to his friend the next day. He doesn't say he questioned that friend about the legitimacy of the money given the contact from Starling Bank. But he says he was placed

under duress to provide this money although has no evidence of that. His position is that he gave his friend the money - about £1,650 - that evening in cash from money he had available.

I have considered whether Mr B was an unwitting participant in what happened and whether he ought reasonably to have realised that these payments weren't legitimate. I'm afraid his account isn't a credible one for the reasons I've given, and not least because he has provided later information that he emphatically said he didn't have before. And that information doesn't at its highest support what he says happened even if I accept his difficulty in obtaining anything else. So, I think it's most likely he reasonably knew that these funds weren't legitimately obtained and that's why he moved this money on quickly.

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

- Mr B received fraudulent funds into his account and didn't report this to Starling Bank at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Starling Bank had grounds to believe that Mr B had used fraudulently obtained funds based on the evidence it had.

I appreciate what Mr B says about the impact of the marker but I'm afraid that I don't have a reasonable basis to require Starling Bank to do anything further.

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 B to accept or reject my decision before 27 August 2021.

Michael Crewe
Ombudsman