

The complaint

Mr H complains that Bank of Scotland plc trading as Halifax Building Society has added a marker about him at CIFAS, the national fraud database.

What happened

Mr H says that he had no knowledge of fraudulent activity on his account. Halifax has closed the account and the fraud marker is affecting his ability to get an account elsewhere and operate a business.

Halifax says that it received a report that two payments totalling £2,663.84 were received into Mr H's account on 20 March 2020 as part of a scam. The money was withdrawn using his debit card. It said that it had grounds to close his account and register the marker at CIFAS.

Our investigator didn't recommend that the complaint be upheld. She said that there was high bar for adding a CIFAS marker. Mr H's version of events had changed since he made the complaint. He now said that he had lost his wallet and as he was unsure whether his Halifax card was in it didn't report this. He had no knowledge of the credits to his account. He said he was at work at the time money was withdrawn using his debit card. But she said that there was still no clear way in which someone else would have been able to discover his PIN.

Our investigator noted that the place where the card was used was within 30 minutes of Mr H's workplace and he could have made those payments. She also said that in a call on 23 March 2020 to Halifax Mr H had read his sort code and account number from the card. He had also told Halifax that he had agreed to allow a friend, who he'd known for two or three years to send money to his account as that person's account had been closed. And he had provided that person with his sort code and account number.

Mr H didn't agree. He denied saying he had recognised the payments or that he had his card. He provided information showing that he had a card at a different bank replaced at this time and he says it refunded fraudulent payments from that account. He had provided a letter from his employer saying he was at work on 20 March 2020 until 20:00. And he had reported what happened to Action Fraud at the time.

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, Halifax 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've listened closely to the recording of calls Mr H had with Halifax. In a call on 22 March 2020 he asks why his account has been suspended. He makes no mention of his card having been lost. The fraud team was closed at that time. When he called back the next day he was asked for his account number and sort code. He initially said he didn't have that and then says that he had his bank card there and reads those details. He is asked about the credits to the account and he says he recognises them, and these came from a friend whose account had been closed and that he did a 'favour' for. He says he only expected this to be a lower amount. He is then told his account and that at any businesses in the same group as Halifax will be closed.

I've looked at the entries to his account that day. The credits came in after 16:30. Two payments with his debit card and PIN were made before 18:00. And all of the remaining money was sent by a faster payment of £26.55 to a payee that seemed from the description to be Mr H.

Mr H's explanation now is that he lost his card a few days earlier and didn't realise. There is no clear explanation of how his PIN would have been discovered. Mr H had used the account little before these credits and the balance was zero. His explanation must be that an unknown person found these details and arranged for a significant amount of money to be credited to his account. No checks were evident before that and that person risked detection. In addition, there was a transfer of some of the money using online banking – and there is no explanation for how someone could have accessed his account online using his security details.

I'm afraid I don't find this a credible explanation. Mr H clearly said he had his card in March 2020 and that he expected this money. I think it most likely he made the payments himself or allowed someone else to use his card to do so. I consider that he was responsible for the activity on the account and wasn't an unwitting participant in the movement of fraudulent funds from his account.

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

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

I don't think Halifax acted unfairly in closing his account and registering the CIFAS marker and I don't have a reasonable basis to require it 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 H to accept or reject my decision before 3 November 2021.

Michael Crewe
Ombudsman