

Complaint

The complainant N (a limited company) is unhappy that PrePay Technologies Limited has recorded a Cifas marker against one of its directors.

Background

N is a limited company which had an account with PrePay. In bringing this complaint, it's represented by Mr C, a director of that company. In August 2020, it lost access to its account. PrePay sent a series of questions about its business activities to which Mr C responded. Shortly afterwards, PrePay decided to close the account and record a Cifas marker against Mr C. It hasn't told him or the company what its reasons for doing so were.

This decision came to light when Mr C attempted to open a personal account with a different business. He complained to PrePay. It responded but still declined to tell Mr C why it had decided to record a Cifas marker against his name. Its final response said:

Having reviewed our records, I'm satisfied that the Team handling the review of your account have acted appropriately and in line with all relevant procedures. Unfortunately we can't provide you with any further information regarding the closure of the account. In respect of the CIFAS marker, we maintain that this has been correctly recorded and therefore, we recommend that you contact CIFAS directly regarding this issue.

Mr C was unhappy with this response and so he referred a complaint to this service which was allocated to an Investigator. Unfortunately, PrePay shared only limited information with the Investigator despite repeated requests. In August 2021, the Investigator issued her assessment and upheld the complaint.

She said that, in order to justify the loading of a Cifas marker, the firm had to comply with the requirements set out in its handbook. In particular, she made reference to Principle 4 which describes the evidential requirements that must be met if a firm is to take such a course of action. It says (amongst other things) that a Cifas marker should only be recorded against an individual consumer if there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted. It also says that the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the Subject (in this case, Mr C) to the police.

While PrePay may have had suspicions about the way the account was being used, these requirements make it clear that mere suspicion is insufficient to justify loading a marker against a customer.

The Investigator issued her assessment on 19 August 2021. On 6 September, PrePay contacted us to say it needed more time to respond substantively – but no response has been sent. On 29 September, the Investigator gave PrePay one last opportunity to make submissions with a deadline of 6 October. It did not respond to this either and so the complaint has been passed to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that:

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from PrePay, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of PrePay's failure to reply to the investigator's opinion. I've considered whether the evidence considered by PrePay met the necessary standard of proof to justify loading a Cifas marker. From the evidence that it has shared with us, it has fallen some way short of that requirement and its decision to load the marker wasn't justified.

The investigator also recommended that PrePay pay £150 to N in recognition of the inconvenience it has endured in trying to have its concerns addressed. I find that to be a fair and reasonable sum in the circumstances.

Final decision

For the reasons I've explained, I uphold this complaint.

I direct PrePay Technologies Limited to:

- Remove the CIFAS marker without delay.
- Pay £150 to N without delay to take account of the inconvenience in resolving

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 1 December 2021.

James Kimmitt
Ombudsman