

The complaint

Mr M complains that ICICI Bank UK PLC (ICICI) registered a marker against his name with the Credit Industry Fraud Avoidance System (CIFAS). To put things right, Mr M wants the marker removed.

What happened

In March 2020, Mr M received a call from his bank, ICICI. Mr M says he was asked about payments into his account totalling £42,785 and said they were commission payments he had earned. ICICI told Mr M it had blocked his account and would complete a review in the next seven days. When ICICI completed its review, it decided to close Mr M's account. It wrote to Mr M to confirm its decision on 8 April 2020.

Later in the year, Mr M discovered ICICI had registered a fraud marker against his name with CIFAS. Mr M complained to ICICI, asking for it to remove the marker. ICICI issued its final response to Mr M's complaint on 22 September 2020. It confirmed it had registered Mr M's name with CIFAS, but declined to remove the marker.

Mr M brought his complaint to our service, but our investigator didn't uphold his complaint. She said Mr M had first told our service that ICICI hadn't asked for proof of his entitlement to the money that had gone into his account, but that she'd listened to the calls between Mr M and ICICI and found that ICICI had asked for proof. And that Mr M hadn't provided evidence to support the payments he'd received.

She explained that Mr M could provide an invoice, contract or any supporting paperwork to confirm his entitlement to the funds. Mr M said he was just doing a deal for a friend, so he had no paperwork. Our investigator wasn't able to reach an agreement, so Mr M asked for an ombudsman to review the matter afresh.

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.

ICICI hasn't disclosed why it applied a CIFAS marker against Mr M, and isn't obliged to do so. However, I've looked at the reasons ICICI applied the marker and I've thought about the evidence it relied on when it did so. Having done so, I need to consider whether the report to CIFAS was made fairly.

ICICI needs to have more than mere 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 police. What this means in practice is that the bank must first be able to show that fraudulent funds have entered Mr M's account, whether they are retained or pass through the account. And secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment.

But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to decide whether ICICI had sufficient evidence to meet the standard of proof and load a marker against Mr M. Having looked at all the evidence I'm satisfied ICICI acted fairly when it applied the marker.

Mr M has made representations about the funds he was asked about in March 2020, before ICICI closed his account. Mr M says they were personal commission payments for helping a friend out with a business deal.

He said the first payment of £30,000 was for introducing a third party to his friend for the purposes of buying clothes. And that the second payment of £12,785 was from a grocery company and was part of a trade deal for raw clothing materials. Although Mr M later said the payment to the grocery company related to second hand office furniture he had sold it.

When Mr M had spoken to ICICI in March 2020, he told it he was expecting both payments and that they were commission relating to a clothes deal. He said he was a middle man and had introduced a buyer to his contacts abroad. Mr M said there was no invoice as the payments were "just his commission". When our investigator asked Mr M if he had any evidence to show he was entitled to the payments, he said "there was no invoice, it was my friend paying".

I recognise Mr M is frustrated that ICICI hasn't told him why it applied the CIFAS marker. But, because it isn't obliged to do so, I can't say it's done anything wrong by not disclosing its reasons. While I can't say why ICICI loaded a CIFAS marker, Mr M has been given the opportunity to explain the payments he received that led ICICI to block and close his account but hasn't been able to substantiate his claim that he's entitled to the money.

There are also inconsistencies in what Mr M has told both out service and ICICI. Mr M didn't mention that he had sold used office furniture when he spoke to ICICI, and hasn't been consistent when he's been asked what the payments were for.

And I've seen no good reason why there wouldn't be an invoice for two large, five-figure commission payments. Based on what Mr M has said, they were made as part of a business deal, and I see no reason why they wouldn't attract tax obligations to one or both parties involved. And I would expect to see invoices in such a scenario.

Having independently assessed ICICI's rationale and considered the evidence both parties have submitted, and on the balance of probabilities, I'm satisfied ICICI was entitled to register a CIFAS marker against Mr M.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 February 2022.

Alex Brooke-Smith
Ombudsman