

The complaint

Mr M complains that The Royal Bank of Scotland Plc (RBS) have recorded a marker against him with the fraud prevention agency CIFAS. He'd like this marker to be removed.

What happened

Mr M held a current account with RBS. In May 2017 there were a number of transactions made using Mr M's debit card that took the account significantly over the available balance. RBS took the decision to close the account immediately. They also recorded a record with the fraud prevention service, CIFAS, against Mr M.

In May 2020 Mr M complained to RBS about the closure, and the CIFAS marker. He said the marker was making it difficult for him to open accounts elsewhere. RBS looked in to what happened but didn't feel they'd done anything wrong. They said the terms of Mr M's account allowed them to close the account in the way they did, and in the circumstances when there is suspected fraudulent activity they can place markers.

Unhappy with this response Mr M referred the complaint to our service. One of our investigators looked in to what happened, but didn't think RBS had been unreasonable. They felt RBS had acted within their terms in closing Mr M's accounts. The investigator also outlined the standards that need to be met before a financial business can record a marker with CIFAS, and explained they felt this standard had been met.

Mr M disagreed with this, so the case was passed to me for a final decision. Having reviewed the evidence I agreed that RBS hadn't done anything wrong but wanted to expand on the reasoning of the investigator. I issued my provisional decision, which read:

The investigator outlined the tests that apply if a firm wants to apply a marker with CIFAS, so I won't repeat them in full here. But the key consideration is that to record a CIFAS marker RBS need to be able to demonstrate that Mr M has deliberately tried to use his account fraudulently.

This needs to go beyond mere suspicion or concern. To meet this standard of proof RBS need to have carried out sufficient checks, and retain evidence of these checks. This should include giving the account holder the opportunity to explain the activity of their account.

Based on the timings of the account closure and the recording of the CIFAS marker, the main concerns are a number of transactions at a pay-at-pump machine that left Mr M's account significantly overdrawn.

These type of transactions are authorised using the chip and PIN of a card before the amount of the transaction is known. This means it's possible to approve payments for values in excess in the available balance. This could be done accidentally, but it's also possible for this to be done deliberately in an attempt to defraud the bank.

In this case Mr M's account had a balance of around £14. There are eight transactions for values higher than that in quick succession, including five for the maximum amount of £99.

This strongly suggests to me someone was deliberately trying to make use of more funds than are available in the account.

I've considered whether RBS then have enough evidence to demonstrate Mr M was aware of this happening, and was complicit in it. Unfortunately they don't seem to have carried out a great deal of investigation at the time, so the contemporary evidence isn't comprehensive. However, because of the type of transactions I know the genuine card and PIN would have been required.

Mr M doesn't seem to have reported losing his card, or disputing any of the transaction, at the time. When our service has asked Mr M about this he can't recall any specific about his card, but said he used to misplace his card a lot. I've considered this, but there doesn't seem to be a reasonable explanation of how someone other than Mr M would then come to know his PIN. I also note that Mr M hasn't necessarily disputed making the transactions, but rather said that he thought if funds weren't available then the bank wouldn't allow the transactions to go through. Therefore it seems a reasonable conclusion that it was Mr M was carrying out the transactions.

On that basis, I don't think it's unreasonable for RBS to conclude that Mr M was trying to make use of more funds than he was entitled to. For these reasons I'm satisfied that RBS have met the standard of proof required for a CIFAS marker to be applied, and I'm not currently thinking of asking them to do anything further here.

I've also reviewed the terms of Mr M's account, in particular the section on when and how they can choose to close an account. In this case I'm satisfied that the reasons they chose to close the account met the criteria laid out, and I don't think RBS have been unreasonable.

Neither Mr M nor RBS responded to my provisional decision, so I'll now proceed with the final decision.

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.

Having done so, I remain satisfied that RBS had enough information to record a marker with CIFAS against Mr M. There is still no reasonable explanation of how an unknown third-party would come to take his card, and come to know his PIN. The likely explanation is Mr M was making the transactions himself.

Considering the balance on the account it seems more likely than not these transactions were a deliberate attempt to make use of more funds than were available. On that basis RBS have enough information to meet the standard of proof for a CIFAS marker to be applied. I'm also satisfied this would be a breach of the terms of the account, and under these terms RBS would be entitled to close Mr M's account in the way they did.

My final decision

My final decision is that I do not 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 21 March 2022.

Ombudsman