

The complaint

Mr J complains that Bank of Scotland PLC, trading as Halifax, loaded a negative fraud marker against his name on the National Fraud Database. He'd like the marker removed and compensation for the impact on him.

What happened

Mr J had a personal account with Halifax, and was also the director of a Limited company I'll call A.

A had a business account with another bank I'll call L.

In late June 2018 Bank L received a report from another third party bank I'll call B advising Bank L that A's account was the beneficiary of fraudulent funds totalling just over £42,000. These payments credited A's account between February and June 2018.

On 20 July 2018 Halifax received a report from Bank L notifying them of the fraudulent payments. They decided to close Mr J's Halifax account and load a negative fraud marker against him on the National Fraud Database.

In December 2019 Mr J complained to Halifax about their actions. He explained that the bank had acted unfairly in loading a marker on his personal record based on activity which took place with a different bank – Bank L – and regarding a separate business – A. Halifax didn't uphold Mr J's complaint. They thought the bank had acted fairly in closing his account and loading a marker against him. However, they paid Mr J £201 in compensation for the bank's delays in responding to him.

Mr J wasn't happy with Halifax's conclusion so complained to our service.

One of our investigator's looked into Mr J's complaint. On doing so they concluded that our service didn't have the power to look into Mr J's complaint. They explained to Mr J that because the marker had been loaded due to activity which took place on A's account he wasn't an eligible complainant. They explained he's not a consumer and he doesn't have a direct relationship with Bank L.

However after contacting Bank L and Bank B our investigator provided new evidence to Halifax. And on 6 November 2020 the bank agreed to remove the negative fraud marker. Mr J didn't agree. In response he said:

- It's not fair as Halifax shouldn't have been able to apply a negative marker on his record when the activity related to his business account.
- We should be able to look at it as the marker is on his personal account.
- He'd closed A's account when the fraud was reported so the marker shouldn't have been applied.

As Mr J didn't agree with our investigator's conclusions the case was passed to me to decide.

On reviewing Mr J's complaint, I reached a different conclusion to our investigator. In my provisional decision I said I thought we could consider Mr J's complaint, and recommended that Halifax pay Mr J £800 in compensation for the impact of the marker on him.

Halifax accepted my provisional decision. But Mr J didn't. He wrote a detailed response, which I'd like to reassure him I've read in full. But, I'll only address what I think is most relevant to the compensation in this case and matters relevant to Halifax, not Bank B or Bank L.

In summary Mr J said:

- He's able to provide evidence of being refused bank accounts – but it'll likely take a long time
- The fees he's been charged by P are likely higher than the £800
- It was impossible for him to trade successfully via his account with P
- It took him a long time to find out about the marker, despite lots of contact with numerous third party banks – Halifax didn't notify him as they should have done.
- It's not fair to say he should have found alternative employment, which wasn't impacted by the marker.

As Mr J didn't agree with my provisional decision I've reconsidered my conclusions.

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.

In my provisional decision I said:

Jurisdiction:

Firstly, I've briefly considered our services powers in relation to Mr J's complaint. And whether I think we have the power to look into his concerns. And I've reached a different conclusion to our investigator on this, and I'll explain why below.

Our investigator concluded that Mr J isn't an eligible complainant because he's not a consumer of the business – Bank L – instead A are.

However, I'm satisfied he is. I say this because the bank who loaded the negative marker against Mr J is Halifax – and Mr J had a personal account with Halifax. Meaning he's a consumer. And therefore an eligible complainant.

Did Halifax act fairly in loading a negative marker?

Halifax have agreed to remove the negative marker loaded against Mr J, but I still need to consider whether Halifax acted fairly in initially loading the marker.

To load a fraud marker on the national fraud database Halifax need to meet the below standards which include:

- *There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted.*

- The evidence must be clear, relevant, and rigorous such that the member could confidently report the conduct of the subject to the police.

I've looked at the evidence provided by Halifax to show fraudulent activity took place on Mr J's account. And I'm not satisfied that Halifax had sufficient evidence to meet the required standard. Halifax's evidence needs to be clear, relevant, and rigorous to show that fraudulent activity took place on Mr J's account.

Halifax have explained that they loaded a negative marker against Mr J because of contact Bank L received from Bank B. They've explained that Bank L were notified that A had carried out fraud on his account with Bank L. And as A's account with Bank L was already closed, and Halifax are part of the same banking group as Bank L this information was shared with them and they decided to close Mr J's account and load a negative marker.

For Halifax to load a negative marker against Mr J they need to have evidence fraudulent activity took place on an account that Mr J had with Halifax. From what I've seen the alleged fraudulent activity Halifax used to justify their decision took place between Bank B and Bank L. And it's not enough for Halifax to argue they're part of the same banking group to take such significant action on Mr J's record.

Even if I did think Halifax were able to use activity which took place on Bank L's account to load a fraud marker, I'd expect Halifax to do two things which they didn't do. Firstly to contact Mr J before loading the marker to understand whether he had an innocent explanation for the account activity. And secondly to question the information they received from Bank B and Bank L. Once Mr J found out about the marker he contacted Halifax to advise them that Bank B told him they hadn't reported him for fraudulent transactions to Bank L – however Halifax made no attempts to contact Bank B. Which I find surprising.

Overall, I think Halifax shouldn't have loaded Mr J to the national fraud database – and when they were notified by Mr J about Bank B's information, I think they could have done much more to investigate their decision further.

What was the impact?

Mr J has provided a detailed breakdown of the impact of the negative fraud marker on him and his family. Mr J first highlighted that Halifax's decision to put a marker against him led to his business A not being able to trade. I understand this will be disappointing to Mr J but as this complaint has been brought by him in a personal capacity, and the loading is against him rather than A, I can't consider any financial or other impacts A experienced.

I've moved on to consider Mr J's additional points. Mr J's explained that he was unable to open a non-fee paying account with a mainstream bank since the loading of the marker. He's been unable to provide evidence of this, however I've seen statements from him showing that he had an account with an e-money business I'll call P until the marker was removed. And, as Halifax will be aware, it's highly likely that the negative fraud marker caused him significant difficulties in obtaining banking facilities or any credit. Although Mr J's account with P gave him some basic banking facilities, he also incurred a number of charges for day to day transactions.

He's explained that the fee-paying account he was able to open with P severely restricted his ability to trade – and he'd like around £800,000 in compensation for this. Mr J's explained that around the time the marker was loaded his business, A, ceased trading and as a trained engineer he wanted to return to career as a plumber. But, because of the monthly and annual deposit restrictions he was unable to trade successfully.

Mr J's provided evidence of a job he completed in October 2020 for which he was due to be paid just over £6,500. He explained that these jobs could be completed within 2 days, and he'd earn over £3,500 per job with two in a week meaning earnings of over £7,000 weekly. I've considered Mr J's argument here – and I don't doubt that having an account with P limited some of his day to day banking activities. However I'm afraid on balance I can't agree that Halifax's actions had the significant impact on Mr J that he describes. Looking at the evidence that Mr J's supplied about his inability to trade I can see that this was a 'job' Mr J was completing in October 2020. This firstly suggests that he was able to trade – up until just before Halifax removed the marker, in October 2020.

Secondly Mr J didn't complain to Halifax about the negative fraud marker until December 2019 – I find this strange if their actions caused him the severe impact he describes. And I would have expected him to complain to the bank much sooner if this was the case.

Lastly, Mr J's helpfully provided evidence of him being in receipt of Universal Credit in October 2019 – during the time the marker was loaded on record. And although I accept Halifax's action likely impacted on his ability to trade – through the restrictions imposed in using his account with P – there was nothing preventing Mr J mitigating his losses by obtaining alternative employment.

Mr J's also highlighted the impact on him, and his family from Halifax's actions. Mr J explained he was forced to leave the family home because of his financial problems, it caused irreparable damage in his relationship and devastation to his life.

For the reasons I've outlined above, I do think that Mr J has experienced inconvenience because of Halifax's actions. And I accept it likely caused him significant anxiety and impacted on his family's wellbeing. But I can't agree that the bank's actions prevented him from earning the sums he's described. I appreciate this will disappoint Mr J, but overall I think based on the lack of evidence Halifax had to load the marker in the first place, the length of time the marker was present, Mr J's inability to open a mainstream bank account and the challenges it presented him in trading an additional £800 is fair compensation.

Response to my provisional decision:

Mr J didn't accept my provisional decision – and in response he raised a number of points.

Mr J's explained that he could provide evidence of the bank account refusals – but as I've explained this wouldn't change the amount of compensation I think is fair. I'm satisfied that even without this evidence it's highly likely this was the case.

Mr J's argued that it was impossible for him to trade successfully via his account with P, and I don't dispute that using his account with P made it more difficult for him to trade. However, as I explained in my provisional decision, Mr J's provided evidence that he was trading just before the marker was removed. Although there were barriers in place making it more difficult for him I'm satisfied this shows he *could* still trade.

Mr J's explained that he made numerous attempts to try to find out why he was unable to get credit and wasn't able to open a non-fee paying bank account. And this caused him significant distress. I don't doubt discovering the marker, and making contact with numerous banks was very inconvenient to Mr J. Although I agree with Mr J that Halifax should have contacted him about the marker, if the marker had the severe impact Mr J's explained – including his inability to trade – I'd have expected him to have discovered it sooner. And then complained to Halifax before December 2019.

I've considered Mr J's point, that he shouldn't have to mitigate his losses. I'm afraid I can't agree with him here. The marker which Halifax loaded against Mr J didn't stop him trading, and didn't stop him from engaging in alternative types of employment. It's very difficult for me to say on balance that the reason Mr J was in receipt of universal credit for some of time when the marker was loaded was mainly or solely due to the loading of the marker. I say this because before the marker was loaded, Mr J was also the director of a limited company, A. And unfortunately A dissolved and Mr J changed employment – making it difficult to argue that the reduction in Mr J's income was solely or mainly due to Halifax's actions.

I've lastly considered Mr J's argument that the fees he was charged by P were likely higher than the £800 compensation I've awarded. I've checked the charges P have, and I agree with Mr J that he was likely charged for banking activities which wouldn't have been the case if he'd been able to open a non-fee paying account. However, the majority of these fees are small – for example £0.99 to pay a direct debit. And for this reason I think £800 fairly covers the charges imposed and the overall inconvenience caused.

Putting things right

Overall, as I explained in my provisional decision, I'm satisfied Mr J experienced significant inconvenience because of Halifax's actions. But, I'm unable to fairly conclude the marker led to the significant reduction in income Mr J describes. Therefore I think £800 compensation for the inconvenience caused to him is fair.

My final decision

My final decision is I direct Bank of Scotland plc, trading as Halifax, to:

- Pay Mr J £800 in compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 26 April 2022.

Jeff Burch
Ombudsman