

The complaint

Mr O complains that Starling Bank Limited registered a marker at CIFAS, the national fraud database when it closed his account.

What happened

Starling Bank says it received reports that payments made into Mr O's account had been fraudulently obtained. Mr O told it that they were 'money for a laptop from a friend' and 'an early Christmas present from a friend'. The money had been quickly moved on from his account. Starling Bank decided to close the account and register the CIFAS marker.

Our investigator recommended that the marker be removed. He said that the bar for adding a marker was a high one. There must be more than mere suspicion. And the guidance from CIFAS stated that:

*"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]
The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police."*

He said that Starling Bank needed to be able to show that fraudulent funds had been transferred to Mr O's account. But also, that he was deliberately dishonest in receiving the money and knew it was or might be an illegitimate payment. The marker shouldn't be registered against someone who acted unwittingly.

Our investigator said that there had been reports that the money had been obtained fraudulently. But he didn't think that Mr O had been shown to be complicit in this. Mr O had said that he had allowed someone at college to use his account as that person didn't have one. The money had been transferred to a second account in Mr O's name at a different financial business. Mr O said that the money was then withdrawn from that account for his friend. There were no statements now available for that other account as it was closed too. Mr O was only 16 at the time and potentially vulnerable. There was limited information to show that he was aware of the nature of the activity and that he was benefitting. It was plausible for him to help someone out at college and so it hadn't been proved Mr O was complicit in the fraud.

Starling Bank didn't agree. It said that it inferred from the comments of the investigator that it was being required to prove beyond reasonable doubt that Mr O was dishonest. It couldn't see why it was necessary for funds to be transferred to his other account or why a fraudster would want to do this. It hadn't been able to obtain information from Mr O's other bank. There was no evidence to support that a friend of Mr O carried this out. And only Mr O's phone had been used to access the account which meant he would have had to have allowed this person free access to the account.

my provisional decision

I issued a provisional decision on 10 May 2022. I set out below what I said.

I needed to consider whether the report to CIFAS was made fairly. On this point, Starling Bank 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'd taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mr O was deliberately complicit in what happened include whether he knew or ought to have known that the money wasn't legitimate, whether he may have benefitted from the money by keeping part and whether he has provided generic or inconsistent explanations.

The first credits involved were for £60 and £100 from one sender on 6 December 2020. These were moved on within two minutes of receipt. And then payments of £110 and £190 from a different sender on 9 December 2020 which were moved on within three minutes of receipt. Starling Bank received reports that these payments had been fraudulently obtained. It asked Mr O for his explanation. He stated that he had been expecting the money and gave reasons for this. After it told him it would be closing the account he then said that a friend had asked to use the account. And that the friend had the card. But Starling Bank noted that the payments were made using the app and Mr O had control of this.

He's given a further explanation to this service. He said that he didn't know the person that wanted to use his account that well and that he never saw that person again. He said that this person told Mr O in advance to make excuses as it was expected Starling Bank would ask about the money. The person was able to use his phone to make the transfer to his other account and then withdrew it. He provides no explanation for why that transfer was necessary.

I appreciated Mr O's age at the time and that he could have been vulnerable. There's no evidence that he was coerced into receiving the money or allowing his account to be used in this way. Or that he wouldn't have been able to understand that the circumstances he's described seemed suspicious.

I was thinking about whether Starling Bank's actions were reasonable. On Mr O's version of events he was told to give a false explanation of why the payments were being received. And that questions were likely to be asked. There is no evidence to support anyone else accessing his account. But the account was clearly being monitored closely for these fraudulent payments as they were sent on so quickly. There was in my view no explanation for why his other account would need to be used in this way. The amount of the payments could have been withdrawn in cash by Mr O from his Starling Bank account if these were for a friend. The money went to another account of his and he says was withdrawn. So, I thought there are grounds to think he may have benefitted. And he now says that he did this for someone he seemed hardly to know. I didn't see why he would necessarily have trusted that person and he's given no explanation for this.

Having balanced all these factors I considered that Starling Bank had reasonable grounds to believe Mr O had been complicit in the fraudulent money received into his account. It's right to say that it doesn't have to show this beyond reasonable doubt. It's not impossible that Mr O was an unwitting party but on the evidence I didn't think that's most likely here.

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

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

I said I didn't have a reasonable basis to find Starling Bank made a mistake or acted unfairly when it closed Mr O's account and registered the marker. I appreciated what he says about the impact on him now and his difficulty in opening an account elsewhere.

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.

Neither Mr O nor Starling Bank made any further comments. That being the case I see no reason to depart from my provisional decision for the reasons I set out above.

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 O to accept or reject my decision before 29 July 2022.

Michael Crewe
Ombudsman