

The complaint

Mr M complains that Lloyds Bank PLC ('Lloyds') registered a Cifas marker against him without due cause.

What happened

I issued a provisional decision in June 2022 to explain why I thought Mr M's complaint should not be upheld. And I said I'd consider anything else anyone wanted to give me. This is an extract from my provisional decision:

"In November 2018 Mr M received a payment into an account he held with another bank, who I'll call Bank B. £1,000 of this money was transferred from his account with Bank B to his account with Lloyds shortly thereafter. Bank B then received notification from the sending bank that the money had been sent to Mr M's account as the result of fraud. Bank B said they tried to contact Mr M but were not successful in getting through to him, nor did they hear back from him as they had requested. Bank B looked into what happened and thought that Mr M was likely misusing his facility as:

- *The funds were transferred to another account of Mr M's, which was not the usual activity of an unknown third party accessing his account without him knowing;*
- *Some money was removed via cash withdrawal using Mr M's card and PIN and there was no clear point of compromise that would have allowed someone else access to these;*
- *Whilst the mobile used was a new device, it was registered using a one time passcode that had been sent to the mobile number that was registered to Mr M's account over a year prior to this;*
- *They didn't think he had provided a plausible explanation for what happened. They said he hadn't questioned the account closure at the time, and he hadn't flagged the account activity as suspicious at the time when funds went into two of his accounts.*

Bank B closed Mr M's account and registered him with Cifas. They also notified Lloyds about their concerns. Lloyds reviewed Mr M's account and took the decision to close it, however this was not done at the time due to an internal error. Mr M contacted them in 2020 when he noticed the account which he had assumed had been closed in 2018 was still appearing on his credit file. Lloyds then looked at what had happened, and closed his account and registered him with Cifas for using his account to receive fraudulent funds.

When our service asked Mr M about these transactions in and out of his accounts, he said he had:

- *no knowledge of these funds, where they came from or how they came to be in either of his accounts;*
- *not given his banking information to anyone nor allowed anyone to use his account;*
- *lost his Bank B card around this time, and had reported it lost as soon as he had noticed;*
- *a copy of his PIN recorded on his phone, although he didn't lose this and no one else*

had access to it;

- *accessed his online banking with both banks to check his balance as well as to transfer funds between his accounts;*
- *been told that around this time two men had appeared at his home address and threatened his family and alleged that he owed them money – the police were called but he didn't know who these people were or why they thought he owed them money.*

Mr M brought his complaint to our service as he remained dissatisfied. Lloyds declined to remove the Cifas marker, and explained to that they were satisfied he had used his banking facility held with them to receive fraudulent funds. Our investigator looked into what had happened and recommended that the complaint be upheld. This was because they didn't think Lloyds had sufficient evidence to support referring Mr M to Cifas. Mr M agreed with these findings, but when we didn't hear back from Lloyds the complaint was referred to me to decide.

What I've provisionally decided – and why

I've considered all of the evidence. Having done so, I am minded to reach a different outcome from our investigator. I'll explain why.

The type of Cifas marker that Lloyds asked to be applied is for 'misuse of facility' – relating to the account being used to receive fraudulent funds. To file such a marker, Lloyds are not required to prove beyond reasonable doubt that Mr M is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. Cifas guidance says:

- *"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.*

So the relevant finding for me to make is whether I believe there is sufficient evidence to conclude that the money sent to Mr M was as the result of a fraud, and that he was deliberately dishonest in relation to this, such that Lloyds would be able to escalate its concerns to Cifas. Based on my current review of the evidence, I do think there is enough evidence for Lloyds to maintain the Cifas marker. I'll explain why.

It is not in dispute that the funds that were sent to Bank B and onto Mr M's Lloyds account were sent as the result of a fraud. Mr M says he was unaware of the funds – not that he had any entitlement to the funds. What is in dispute is whether the evidence suggests it is likely that Mr M was deliberately dishonest in receiving the funds in his Lloyds account; or whether he was unaware or unwitting. I am minded to say in my final decision that I think it is most likely that Mr M made the transactions on his Bank B account to his Lloyds account, or allowed someone to do so on his behalf, and that he was deliberately dishonest in doing so. By extension, this would mean he would have been deliberately dishonest in receiving the £1,000 into his Lloyds account. This is because:

- *For an unknown third party to have done this without him knowing, they would have had to have his card and PIN for his account with Bank B to make withdrawals of some of the fraudulent funds. Whilst Mr M said he lost his card around this time, his replacement card was never reported lost or stolen and this was the card that was used for the transactions in question.*
- *There is no plausible point of compromise for an unknown third party to have accessed his PIN to his card with Bank B – whilst he had it recorded on his mobile phone, he said that no one would have had access to this and he had not lost his phone at any point. So I cannot see how someone unknown to Mr M would have completed the withdrawals from Bank B of the fraudulent funds.*

- *There is no clear point of compromise for the Bank B mobile banking details required to access the app to transfer the funds to his Lloyds account.*
- *The phone number the one time passcode was sent to was registered with Bank B about a year before the fraudulent funds came into the account. It seems unlikely that an unknown third party was able to do this, and would then wait a year to utilize the access they had to Mr M's account. And the IP address the new device used matches one that Mr M used on genuine logins. So I think it is most likely that the one time passcode was sent to Mr M's genuine number. And so, there is no clear point of compromise for the one time passcode which used to register a new device to his mobile banking.*
- *There is no logical benefit to an unknown third party, who somehow had access to all of the information needed to move and withdraw funds from Mr M's account with Bank B, for them to instead move the funds to another account in Mr M's name that they may have had no access to. It would seem more likely that they would withdraw all of the funds, or move them on to another account they had full access to.*

So having considered all the evidence and information I have so far, I am minded to say that it was most likely that Mr M completed the activity on his account with Bank B, and then moved fraudulent funds to his Lloyds account with deliberate dishonesty – so I currently think Lloyds can fairly and reasonably maintain the Cifas marker.

My provisional decision

Unless my thinking changes upon receipt of new evidence, I am minded to reject this complaint. “

The deadline for further submissions has passed, so the case has come to me to make my 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.

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I am not upholding this complaint.

Lloyds responded to my provisional decision to say they were happy with the decision and had nothing further to raise. Mr M confirmed he did receive my provisional decision, but did not end up submitting any response or any further information. As such, for the reasons set out above, I conclude that it is fair and reasonable for the Cifas marker to remain.

My final decision

My final decision is that I do not uphold this complaint and Lloyds Bank PLC need do nothing further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 August 2022.

Katherine Jones
Ombudsman