

## The complaint

X has complained that Lloyds Bank PLC registered a marker against him at CIFAS, the national fraud database.

## What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In 2021, X received the proceeds of fraud from a victim, then forwarded the money on to another account.

X explained that he thought this was a loan for him. He said that this loan was given to him either by a stranger who he'd been introduced to after he got in financial trouble, or by a close friend of a friend who he'd been talking to long before he got in financial trouble. X said this person had offered him the money as an interest-free loan and offered to let X keep a share, all as a form of charity – though he had no evidence of this, such as a loan agreement or any messages where the person said it was a loan. X said he used the money to pay off his other debts, though when asked for evidence of where the money went he didn't provide any. X said he forwarded the money on to another account of his in order to make it easier to repay his loans.

Lloyds closed X's account and registered a marker against him at CIFAS.

Our adjudicator looked into things independently and didn't uphold the complaint. X asked for his case to be reviewed afresh, so the complaint's been passed to me to decide.

I sent X and Lloyds a provisional decision on 12 September 2022, to explain why I didn't think the complaint should be upheld. In that decision, I said:

*In order to register this marker, Lloyds were not required to prove beyond all reasonable doubt that X had done something wrong. They did need to have reasonable grounds to believe that he'd misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I currently think Lloyds did have sufficient grounds to register this marker. I'll explain why.*

*First, I am aware of the practice of giving interest-free loans as a form of charity, and I know that this is something that happens. But I don't think that's what happened here.*

*The funds involved were the proceeds of crime. And the money was forwarded to X directly from a victim of the crime. The person who X was in contact with was not a philanthropist, but a fraudster.*

*This is important, as it would not make sense for a fraudster to commit a complex crime, harm a victim, and risk significant prison time, just to give some or all of this money away as charity. It would not make sense for a fraudster to lend it as a loan either – not least a loan with no set repayment dates or amounts, and not least when transferred directly from the victim's account – as it's highly unlikely that they would receive any repayments at all before the fraudulent transfers are detected and the money frozen. They would be taking huge and unnecessary risks, with no real benefit to themselves. It is simply not likely or plausible that X was lent the direct proceeds of fraud as a loan, nor told to keep a share as charity.*

*On the other hand, it is a common practice for fraudsters to send people proceeds of fraud, and to let them keep a share, in exchange for the recipient forwarding on the funds such that they can't be easily recovered when the fraud gets found out. That possibility is both likely and plausible, and fits neatly with what happened here.*

*X acted quite quickly to forward on the fraudulent money once he received it, and this meant that the money couldn't be easily recovered and sent back to the victim after. X claims he did this in order to make it easier to pay his loans from a "central account". But X's Lloyds account was just as capable of making payments to his loans as the account he forwarded the money to. By transferring the money away first, X would've only added an extra unnecessary transfer to the process of paying his loans, he wouldn't have made things any easier. So I don't find that explanation to be likely or plausible. But again, X's actions do fit well with the possibility that he knowingly and willingly passed on the proceeds of fraud.*

*The money was sent to X from an account with a completely different name to the person he'd been speaking to, with the payment reference being for expenses, not a loan. Yet he didn't query this with Lloyds or the person who sent him the money. X says he didn't question this as he doesn't work in finance. But it would've been clear that this money didn't come from the person he was speaking to, and that it did not relate to any loan.*

*It's also important to note that as yet, X has declined to evidence where he sent the money to. He says he used it to pay off his bank loans, but we asked X for statements for the account he forwarded the money to – which he says was another account of his – and for the loans he says he paid off. We also chased X for this information. And this evidence would be very straightforward to provide. But X did not provide it. He didn't provide any other evidence of this being a loan, such as an agreement or prior discussion. He also declined to provide evidence of his conversations with the friend who introduced him to the fraudster.*

*X did provide some messages he had with the fraudster. But there is no mention of any loan until after the fraud was discovered – at which point X sent a series of messages claiming this was a loan. He only wrote these messages after the fact, and the fraudster did not confirm or agree that this was a loan. I do not find that this supports X's testimony.*

*I also need to mention that X's testimony has been inconsistent and contradictory in places. For example, at different times he's said different things about when he met the fraudster, how well they knew each other, and what happened to their messages. This also makes it difficult for me to support any of his versions of events.*

*Lastly, I've not seen any evidence that makes it seem unlikely or implausible that X could have knowingly and willingly passed on the proceeds of fraud.*

*In summary, X received fraudulent funds, which he has not been able to evidence that he was entitled to. He passed on these funds, such that they could not easily be recovered. He benefitted from the fraud, and the fraudster was willing to let him keep a large share of the proceeds. His explanations are unlikely, implausible, and are not supported by reasonable evidence – even when such evidence would be easy to get. And X’s testimony has been contradictory in places. On the other hand, the evidence and the wider circumstances of the case do support the possibility that X knowingly and willingly misused his account. So I think it’s fair that Lloyds registered the appropriate marker with CIFAS, and that they closed X’s account.*

*This is a difficult message for me to give, and I know it’s a difficult message for X to receive. But given the evidence I have, and the balance of probabilities, I’m currently unable to reasonably reach any other conclusion.*

I said I’d consider anything else anyone wanted to give me – so long as I received it by 26 September 2022. Lloyds didn’t add anything further. X sent in further submissions, which I’ll talk about below.

### **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 doing so, I have read through everything X sent us, and I’ve taken it all into account. With that said, I will focus on what I have found to be the key points. If X would prefer his case to be looked at on a strict point-by-point basis, he is able to reject my decision and pursue Lloyds through the courts instead.

X feels we treated him unfairly by issuing a provisional decision saying he hadn’t provided certain information, as he says he was too sick to get back to us. But he only told us about this illness *after* the provisional decision, so we couldn’t have known that beforehand. And the provisional decision gave X extra time to send us information, which he’s now done. There is no need to “reverse” the provisional decision as he’s asked for – the very point of the provisional decision was to give both sides extra time to make submissions before the final decision. I will now consider those submissions in this final decision.

Most importantly, X has now provided statements showing what he did with the fraudulent money. However, rather than supporting that X was an unwitting participant in the fraud, these statements actually show that he knowingly and willingly benefitted from the fraud.

According to both sides, Lloyds blocked X’s account the very next day after he received the funds – on 4 June 2021. X spoke to Lloyds about this and they told him the money he’d received was the proceeds of fraud. These events are reflected both in Lloyds’ records, and in X’s own testimony.

On 8 June 2021, Lloyds’ fraud investigation concluded. They found that X had received and passed on fraudulent funds. Their notes show that they spoke to X about this some time on or before 8 June 2021, and enquired about what had happened to the victim’s money, with a view to seeing if they could recover it. And X told Lloyds he’d spent it all on bills – there was nothing left to recover.

But on 8 June 2021, the victim's money was still sitting in X's personal account – the same account he'd acted quickly to forward the money to on the day of the fraud. The balance was just under £2,400 at that point, and the fraudulent funds X had received amounted to just over £2,100. So X could have easily returned the money to the victim – or returned it to his Lloyds account and let Lloyds sort it out for him. And by that point, he knew the money he'd received had been taken fraudulently from an innocent victim. But instead of returning it, X told Lloyds he'd already spent it all on bills, which was not true.

X did eventually spend the money. But he only started paying towards his debts – his stated reason for receiving this “loan” – on 15 June 2021, at least a whole week after he'd been told the money came from fraud. And he spent it relatively slowly, over the course of about two months, despite knowing that whole time that the money he was spending had been taken fraudulently from the victim of a crime.

To summarise:

- X received the confirmed proceeds of fraud
- X forwarded the funds on quickly, in such a way that Lloyds could not recover them
- X told Lloyds that the money had all been spent when he actually still had it
- X chose not to return the victim's money even when he knew it was the proceeds of fraud and when it was still available in his personal account
- X then knowingly and willingly spent the proceeds of fraud for his own benefit, again even when he knew they were the proceeds of fraud

As such, I am satisfied that the CIFAS marker should remain.

X made a number of points surrounding his inability to evidence that this was a loan. For example, he said it's unfair for us to expect a written loan agreement for a charitable loan. But we didn't only ask for a loan agreement – we asked if X had *any* evidence this was a loan, including emails or texts where the fraudster called it a loan. And he has none.

X pointed out that the fraudster didn't *deny* this was a loan, but that's not substantive. The fraudster didn't agree with X that it was a loan, or confirm at any point that it was a loan. The only mention of a loan came from X, and that was only *after* the fraud was discovered. There is no evidence which actually positively substantiates that this was a loan. Whereas the surrounding evidence, circumstances, and balance of probabilities supports that this was *not* a loan. For example, per the above, X's statements show that he knowingly and willingly profited from the fraud even when he knew the funds were fraudulent and not a loan. And I'll repeat what I said in my provisional decision about why it is neither likely nor plausible that a fraudster would give away or loan out the proceeds of crime directly from a victim:

*It would not make sense for a fraudster to commit a complex crime, harm a victim, and risk significant prison time, just to give some or all of this money away as charity. It would not make sense for a fraudster to lend it as a loan either – not least a loan with no set repayment dates or amounts, and not least when transferred directly from the victim's account – as it's highly unlikely that they would receive any repayments at all before the fraudulent transfers are detected and the money frozen. They would be taking huge and unnecessary risks, with no real benefit to themselves. It is simply not likely or plausible that X was lent the direct proceeds of fraud as a loan, nor told to keep a share as charity.*

To put it simply: X's version of events is highly unlikely and implausible. I cannot reasonably conclude that this money was paid to him as a loan.

X argued that if there were contradictions in his testimony, it must be because we'd misinterpreted what he'd said. But that's not the case. For example, at different points X said that this loan was given to him either by a stranger who he'd been introduced to after he got in financial trouble, or by a close friend of a friend who he'd been talking to long before he got in financial trouble. These are clearly different versions of events.

X felt that because he'd now provided all the evidence he could, we should find in his favour. But that's not how this works. Providing evidence, in and of itself, does not mean that one automatically wins the case. The question is what the evidence shows when it's all taken together – and here, the evidence does not support X's testimony, but does support that he knowingly and willingly benefitted from fraud.

Similarly, X felt there were no reasonable grounds for the marker, and that we'd treated him as guilty until proven innocent. But that's not the case either. We assessed the complaint impartially, based on all the evidence at hand, based on the individual circumstances of the case, and based on the balance of probabilities.

In doing so, I have found that: X received fraudulent funds; he's been unable to evidence he was entitled to them; he transferred them on quickly, such that Lloyds could not recover them; he told Lloyds the money had been spent when he actually still had it; he chose not to return the funds even once he knew they were the proceeds of crime; he instead spent the fraudulent funds for his own benefit while knowing they were fraudulent; his explanations are unlikely, implausible, and are not supported by any reasonable evidence; his testimony has been unreliable; and it is both likely and plausible that X knowingly and willingly misused his account, which fits well with the evidence at hand.

As such, I find that it was fair for Lloyds to register the appropriate marker with CIFAS, and to close X's account.

### **My final decision**

I do not uphold this complaint.

This final decision marks the end of our service's involvement in the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 31 October 2022.

Adam Charles  
**Ombudsman**