

The complaint

Mr A is unhappy that Bank of Scotland plc (trading as Halifax) UK Plc closed his bank account and won't return money that was paid into the account to him. He also complains that Halifax registered a CIFAS marker against him. CIFAS is the UK's fraud alert service.

What happened

Mr A had an account with Halifax. Between 14 and 16 December 2021, three payments were made into Mr A's account – one for £15,000 and two for £6,800. Mr A transferred a large portion of the funds to another account held with a different bank.

Following this, in January 2022, Halifax were notified by another bank that their customer, who I will refer to as Mr B, had been the victim of a scam and that the three payments Mr A had received in December 2021, were fraudulent.

Halifax took the view that it needed to look into the payments and how Mr A was operating his account. So, it blocked Mr A's account and contacted him to ask him some questions about the payments he'd received from Mr B. Mr A told Halifax that he had sold a property overseas and the payments had been arranged by a money transfer agent he'd previously used, who I will refer to as Mr H. Mr A said he didn't know Mr B and wasn't aware that the money used to pay him was fraudulent.

Halifax spoke to Mr A again about the payments and told him that it was going to return the remaining fraudulent funds back to the sending bank. Mr A told Halifax that he'd spoken to Mr H who told him that he'd arranged the payments to be made to him via Mr B as Mr H's business wasn't doing very well and he was struggling for funds. So, he'd reached out to contacts he had in the UK to get Mr A's money to him, which is why he'd received the payments from Mr B. Mr A provided copies of paperwork relating to the sale of his property to Halifax. This included deeds in Mr A's name for land, a sales contract showing Mr A had sold a property for \$90,000 overseas, and a headed letter from Mr H which said he'd used his business partner in the UK, Mr B, to make a payment of \$40,000 to Mr A.

Halifax reviewed the paperwork Mr A provided, but said it wasn't sufficient to show he was entitled to the money in his account. So, it didn't release the money to him and returned the remaining fraudulent funds back to the sending bank. Following this the bank decided to close Mr A's account. It also placed a fraud marker against Mr A's name with CIFAS. And suggested Mr A should contact Mr B to get the fraud claim withdrawn.

Mr A complained to Halifax. He said he hadn't known the money paid into his account was fraudulent and said he hadn't done anything wrong. Halifax looked into Mr A's complaint but didn't uphold it. The bank said they'd applied the terms and conditions of his account fairly when carrying out the closure. And hadn't done anything wrong when it returned the funds to source. Halifax also said they'd fairly loaded a CIFAS marker against him. Unhappy with this response Mr A brought his complaint to this service where one of our investigators looked into things.

The investigator asked Mr A some more questions regarding the payments made into his account, the sale of his property and his relationship with Mr H. She asked Mr A where the outstanding balance of \$45,000 had been paid and whether he had any evidence to show the money being paid to Mr H from the buyer of the land and then onto Mr B.

In response, Mr A said he didn't see why that information was relevant. He told the investigator that he had travelled overseas and sent the remaining balance from the sale of his property directly to the university based in the USA to pay for his son's education. He explained that he had taken this action because of what had happened with his account in the UK and wanted to avoid any further problems. The investigator asked him to provide evidence of this and other evidence regarding his communications with Mr H. Mr A said he would provide everything. But he didn't.

In a subsequent email, Mr A told the investigator that he had arranged for a relative to take \$5,000 USD to the USA to pay for his son's education and that the rest of the money was in his safe overseas. Mr A also said that he had tried to contact Mr B to discuss what had happened, but Mr B wasn't taking his calls or answering any messages he sent to him via WhatsApp. But Mr A didn't provide any further evidence to support this.

Based on the evidence, the investigator said that Halifax hadn't done anything wrong when it reviewed and closed Mr A's account. And she said it had done so in line with the account terms and relevant regulations. She didn't think Halifax had treated Mr A unfairly when it decided not to release the money and recorded a CIFAS marker against Mr A.

Mr A didn't accept the investigator's view. He said he'd provided all he could about the payments into his account. He maintained that he didn't know Mr B and had no idea that the funds paid into his account were fraudulent. He said Mr B should withdraw his allegation of fraud as the money sent to him was rightfully his. He maintained that he had done nothing wrong and had simply sold a property to finance his son's education. Mr A wants the CIFAS marker removed, and the money sent back to source returned to him.

As no agreement could be reached the matter has come to me to decide.

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'll deal first with the bank's decision to close Mr A's account. It's generally for banks to decide whether or not they want to provide, or to continue to provide, banking facilities to any particular customer. Unless there's a very good reason to do so, this service won't usually say that a bank must keep a customer or require it to compensate a customer who has had their account closed.

Having looked at all the information available to me, including Halifax's actions and the information it's provided I'm satisfied that their reasons for closing Mr A's account sit within their commercial freedom. I'm also satisfied that Halifax acted in line with the account terms and relevant regulations when it decided to close Mr A's account. So, I can't say Halifax has done anything wrong or treated Mr A unfairly when it closed his account.

I'll then turn to Halifax's decision to return the money paid into Mr A's account back to source and record a CIFAS marker against Mr A's name. Before placing a fraud marker against Mr A's name, Halifax needed to have a reasonable belief that a financial crime had been committed and that the evidence was such that the matter could be reported to the police. A suspicion or concern isn't enough.

What this means in practice is that Halifax must first be able to show that fraudulent funds have entered Mr A's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or *might* be, an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

Having looked at all the evidence, I'm satisfied that the funds paid into Mr A's account were fraudulent – in the sense that the holder of the account from which they were drawn didn't authorise the payments. Their own bank investigated them before reaching that conclusion and contacting Halifax. Of itself however, that doesn't mean that Mr A was involved.

So, I need to decide whether Halifax had sufficient evidence to meet the standard of proof and load a marker against Mr A.

Mr A told Halifax and the investigator he didn't know that the payments, amounting to just under £30,000 were fraudulent. He has suggested that he'd been the victim of fraud and says everything was arranged by Mr H. He says that he sold a property overseas and the money was payment for the sale of land.

I've considered what Mr A has said about the funds and looked at the paperwork he's provided to support his explanation. I've also considered the information Halifax has provided, which includes information it received from the sending bank about the money paid into Mr A's account by Mr B. Having done so I can't say the bank has treated Mr A unfairly when it decided not to release the money to him and recorded a CIFAS marker against him.

I say this for the following reasons:

- I've seen evidence from Halifax that another bank notified them that the three payments paid into Mr A's account on 14, 15 and 16 December 2021 were fraudulent. And that Mr A's account, was used to pass them on – the money was transferred out to another account held by Mr A and withdrawn in cash by him soon after the payments entered his account
- Mr A has changed his explanation regarding the remaining balance for the sale of his property (\$45,000). When he first spoke to the investigator, he said he had travelled overseas and sent the funds himself directly to his son's university in the USA. He told the investigator he wasn't happy to provide evidence to support this activity. He later provided a different explanation and said he had asked a relative to take \$5,000 to the USA to pay for his son's education and that the remaining balance was in his safe overseas. Neither of these explanations are supported by any documentary evidence – despite being requested by the investigator. I think this would be information Mr A ought to be able to provide especially given the amount of money involved and the legal requirements that generally go along with the sale of property.
- Mr A hasn't provided any paperwork or evidence that set out the negotiations or any communications that led up to the sale, such as emails between Mr A, the estate agent or buyer of the property, which is a normal occurrence when land/property is sold.
- Mr A has said that the funds from the sale were given to Mr H so that he could arrange for the money to be sent to him in the UK. But I've not seen any evidence that this took place. I've also not seen any evidence of communications between Mr B and Mr H arranging to make payments to Mr A. Or anything to suggest Mr B and Mr H were long time business 'partners.' It's not clear to me why, if this was a legitimate sale, why he wasn't able to provide this information.

- I've looked at Mr A's bank statements and I can't see any reference to a land sale or anything to suggest Mr B was acting as a 'middleman.' In fact, the reference against the payments is 'Hannah'. If as Mr A has told us that he was expecting funds into his account from Mr H I think it would be reasonable for him to question three payments referenced with a woman's name, from someone he doesn't know and think that it might be a mistake. But I haven't seen any evidence that he alerted the bank or that Mr A asked Mr H why the payments were referenced in the way they were. Instead Mr A moved some of the funds out of his account and made cash withdrawals.
- It's also not clear to me why Mr A received three separate payments - one of £15,000 and two of £6,800, instead of a one-off payment for the full amount to complete the transaction.
- Mr A has said that Mr H's business was struggling which is why he asked Mr B to make the payments. But according to Mr A and the paperwork he's provided, Mr H had received \$40,000 from the sale of his property to send over to him. So, I can't see how Mr H was struggling financially because supposedly he had been given Mr A's money.
- I note too from looking at Mr A's bank statement that he received a payment of just under £3,000 from Mr H on 16 December 2021. So, it's not clear why Mr H couldn't make all the payments to Mr A and had to use a third-party account.
- I've also not seen any evidence that the deed has been registered with the appropriate land registry where the land is situated. It's not been stamped, and it doesn't show that the Governor's consent has been obtained which is required when land is sold in Nigeria.
- So overall, I'm not persuaded that Mr A has shown he is entitled to the money paid into his account in December 2021. And I'm satisfied that Halifax didn't do anything wrong when it returned the remaining funds to the sending bank.

In summary, when I weigh everything up, I'm not persuaded by Mr A's version of events that he knows nothing about the fraudulent funds which were paid into his account in December 2021. For the reasons, I've explained, I'm satisfied that Halifax had grounds to believe that Mr A was involved in the dispersal of fraudulently obtained funds based on the evidence it had. So, I think it was fair for Halifax to register the CIFAS marker and I won't be asking them to remove it.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 April 2023.

Sharon Kerrison
Ombudsman