

The complaint

Miss O complains that Starling Bank Limited has registered a marker at CIFAS, the national fraud database.

What happened

Miss O says she opened an account with Starling Bank to continue her online selling of goods. She says she didn't know that payments into her account were fraudulently obtained.

Starling Bank said it wouldn't be removing the marker. It had received reports that money paid into Miss O's account was fraudulent. It believed that she had agreed to make and receive the payments. And that a marker was appropriate.

Our investigator didn't recommend that the complaint be upheld. He said that Miss O hadn't been able to provide receipts or evidence confirming the items she sold or when she acquired them. He didn't think she'd been able to show that these payments were for legitimate items. And so, he thought that the grounds for the CIFAS marker had been met.

Miss O didn't agree and wanted her complaint to be reviewed. She said that she was a minor at the time and didn't know the repercussions. She is now at university and is unable to access funding or banking. If she'd known that this money was fraudulent she wouldn't have gone along with it. Miss O said she was desperate and that this had affected her mental health. And her ability to run a business online.

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 need 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.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Second, 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. This can include allowing someone else to use their account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I've 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 Miss O was deliberately complicit in what happened include whether she knew or ought to have known that the money wasn't legitimate, whether she may have benefitted from the money by keeping part and whether she has provided generic or inconsistent explanations.

I note that Miss O opened her account on 30 March 2021. And on 2 April 2021 payments of £500, £450 and £110 were received into her account. She paid amounts of £500 and £110 out within minutes of them being received to a person she says was a supplier. And was unable to do anything further as her account was restricted. Metro Bank received reports that payments had been obtained fraudulently. It asked her to explain these at the time and then decided to close her account on 9 April 2021 and add the marker. When she complained it investigated things again and noted she'd told it that she understood the payments into the account had been made by friends of the buyers. It believed she was acting a money mule and amended the CIFAS marker to reflect this.

Miss O has had the full opportunity to support what she says. The online messages she's provided don't give a complete record of how she became involved with the person she says was a supplier; actually paid deposits to receive any items and so had the items herself to sell; arranged with the buyers for delivery and did so; and how she'd make any money. She's said that this was a continuation of selling she'd been doing through her mum's account but there's no evidence of that. Miss O accepts she knew that the people sending the money were different to the names she says were buyers and seemed to accept that third parties were sending payments. And I note that all the money that came into her account was fraudulent.

I've taken into account what Miss O says about her age at the time. She doesn't describe being placed under any duress here or being especially vulnerable. In my view I think it's most likely she allowed her newly opened account to be used for receiving fraudulent funds. And I think she was a witting participant in this and in moving the money on and reasonably knew that this wasn't a legitimate activity

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

- Miss O received fraudulent funds into her account and didn't report this to Starling Bank at the time.
- She 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 Miss O had used fraudulently obtained funds based on the evidence it had.

I appreciate how disappointed Miss O will be by decision given what she's said about the impact of the CIFAS marker for her. Our investigator has already offered to discuss ways in which Miss O might be able to access support both for financial services and also for the personal issues she's described. And that remains open to her following this decision.

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 Miss O to accept or reject my decision before 22 December 2022.

Michael Crewe
Ombudsman