

The complaint

Mr B complains that Think Money Limited added a marker about him at CIFAS, the national fraud database.

What happened

Mr B says that he asked Think Money to close his account. He is unhappy it added the marker and says he hasn't been involved in fraudulent activity.

Think Money said it had received reports that money received by Mr B in January 2021 had been obtained fraudulently. It had asked him to show he was entitled to funds received into his account and he hadn't done so. Having reviewed his account it decided that there were sufficient grounds to add the marker when it was closed.

Our adjudicator didn't recommend that the complaint be upheld. The specific payments reported as fraudulent were one for £230 and the other for £150 both credited to his account in January 2021. Mr B had told him that the payment for £230 was for fireworks but was unable to show that he had supplied any such goods. He'd also earlier told Think Money that this related to a bicycle. And that the payment of £150 was for the sale of cryptocurrency but again couldn't support this with sufficient evidence. Our adjudicator noted that Mr B had moved some of this money to an account at a different bank shortly after receipt.

Mr B provided some screenshots about what he says were business transactions at this time. He said given the time that has passed he was having difficulty confirming the details relating to the payment of £230. Of the £150 he says that he received the money and was himself the victim of a scam when he sent this on.

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, Think Money 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. 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. 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 note that Think Money did ask Mr B to provide evidence he was entitled to funds he'd received or attempted to receive into his account. With respect to the payment of £230 that had been reported as fraudulent he accepts he gave a false explanation. He'd also said he would provide online chats supporting this at the time and didn't do so. He has nothing to substantiate being due this money. And so, I'm satisfied that he was complicit in receiving these fraudulent funds.

He has provided screenshots though which purport to show that he was selling his own cryptocurrency at the time. In particular that he was paid the £150 for this in January 2021. I note that one of those screenshots states that the buyer had "*marked this trade as paid. Check if you've received the payments and send the Bitcoin.*" I don't have clear information that Mr B did this. I take into account what he says about his own involvement and that this fraudulent payment wasn't reported until April 2021. Having said that I don't see he's formally reported being the victim of a scam himself. I don't think Mr B has sufficiently clarified his own involvement with evidence and taken alongside the clear concern about the payment of £230 I find this payment most likely consistent with fraudulent use of the account too. And I note that in light of these concerns Mr B didn't substantiate other payments into his account as Think Money wanted.

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

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

In light of this it had grounds to close the account which in any event was what Mr B wanted. I appreciate what Mr B says about the impact of the marker for him, but I don't have a reasonable basis to require Think Money to take any further action.

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 B to accept or reject my decision before 31 January 2023.

Michael Crewe
Ombudsman