

The complaint

Mr U complains that Starling Bank Limited added a marker at CIFAS, the national fraud database, when it closed his account.

What happened

Mr U says that he was acting for a company and sold a marketing service and received payment. He doesn't think that the marker was fairly applied.

Starling Bank said it hadn't made a mistake. It said that a payment of £1,725 received into Mr U's account on 17 April 2022 had been reported as fraudulent. It had asked Mr U to show he was entitled to this money and wasn't satisfied with what he'd provided. So, it closed his account and added the marker.

Our adjudicator recommended that the complaint be upheld, and the marker removed. She said that there was a high bar to add the marker. Mr U had now provided information from the company he said he was acting for regarding the contract involved and payment. She was unable to comment on why he'd not been able to provide this earlier. This showed he had discussions with an individual and had been told that the money would be sent by a co-worker. Although Mr U's account had been used for illegitimate purposes she didn't think that he was witting and complicit in what happened.

Starling Bank didn't respond and so the case was passed to an ombudsman.

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

As I understand it the contract that was involved here was for marketing services delivered over time. And so, I don't know why a third party would arrange for fraudulent money to be paid to Mr U in this way. It is unclear how the person Mr U was dealing with and who he explains was the fraudster would benefit. I've noted that Mr U originally provided a copy of a related invoice to Starling Bank addressed to another person he'd never met and with no reference to his company. He's now provided official invoices from that company which refer to the person he was dealing with. It seems based on the narrative on his account statement that the money was paid away the next day.

It is clear from public records that at one time Mr U was a director of the company he was acting for and he has provided payslips to show that he remained employed at the relevant time. He also has a letter from the Chief Executive Officer (CEO) dated 9 September 2022 supporting his version of events and a copy of a contract signed by the person he was dealing with and the CEO. It is unclear why he wouldn't have more of this information to provide immediately to Starling Bank in April 2022 and then when he raised the issue about the marker in June 2022. He's shown though he was out of the country for a period in between those dates.

There is a high bar for a marker. And Starling Bank has now been sent copies of the documents which includes reference to the company wanting to pay the money back and has all the contact points. It hasn't commented on our adjudicator's view. And I note her assessment has been formed having spoken with Mr U about what happened.

I need to balance all these factors and having done so I don't think that the standard of proof for a CIFAS marker is met in this case taking into account the evidence that is now available. That's not to say that there aren't still grounds for suspicion about what happened given fraudulent money passed through Mr U's account. But in my view there is insufficient for a finding that Mr U was deliberately complicit rather than unwitting in what happened. In the circumstances I think that our adjudicator's recommendation to remove the marker to resolve this complaint is appropriate.

My final decision

My decision is that I uphold this complaint and I require Starling Bank Limited to remove the CIFAS marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or

reject my decision before 15 February 2023.

Michael Crewe
Ombudsman