

## The complaint

Mr H complains that Lloyds Bank PLC added a marker to CIFAS, the national fraud database, when it closed his account.

## What happened

Lloyds Bank said it had received a report that 33 payments which came to £2,446 made into Mr H's account had been obtained fraudulently. These had been paid to him over the period April 2021 to February 2022. Lloyds said Mr H had given it two different versions of events. It said that it had asked Mr H about the last payment of £650 in March 2022 and he'd said that he wasn't expecting it and didn't know what the payment was for. He'd spent the money as he had an overdraft and assumed it was his and hadn't seen any details. He didn't give an explanation for the other payments but said the person sending them was a family friend he didn't know too well. When he later complained, Mr H had told Lloyds that this was money from the family friend including for shopping and helping with other things. He'd told Lloyds that he wasn't sure what all the payments were for but did know the majority. And he'd withdrawn the money when it was received although Lloyds said that this hadn't always happened. So, it said it wouldn't be removing the marker.

Our adjudicator didn't recommend that the complaint be upheld. She discussed what happened with Mr H who said he was shocked at this report of fraud. He'd helped the family friend and said for example that payments in October 2021 were made to him while he was with her. Mr H couldn't explain why some of them had been transferred to a person he said was his mother and said this hadn't happened even though this was shown on his statements.

He was asked specifically about a payment of £600 in February 2022. He initially said he didn't know what it was and then instead that it was for the person's business, and he'd been asked to pay it. He couldn't give the name of the business or explain why he'd transferred half of the money to another account in his name. Mr H was also asked about the payment of £650 and said that he was to send this on through a money transfer service. But he'd transferred the money to his mother's account because he'd reached a payment limit. Our adjudicator said that there weren't any significant payments showing to that money transfer service. And she told him he'd said different things during the call and that things didn't add up. Mr H told her he was unable to speak to the person that sent the money as matters were being dealt with by the authorities and he'd been told not to.

Our adjudicator said that it was more than likely that Mr H was complicit in receiving fraudulent payments. And that it wasn't unfair for the marker to be registered and for Lloyds to close his account.

Mr H said he wanted his case to be reviewed. He sent in marked up copies of his bank statements during the period. He pointed out that he'd sent money back to the person reporting fraud. And for example, on 28 September 2021 sent back a payment of £20 he'd received the day before. He hadn't received money in December 2021 but marked payments he'd made to the family friend of £150. And he said that of the 33 payments more than 10 went back. The value of the loss reported was incorrect and he wanted this evidence to be

reviewed.

### **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, Lloyds 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.

Mr H has no explanation of why the person he says he's been helping would have reported these payments as fraudulent. And that person doesn't seem to have retracted the claim and based on what Mr H says things are being looked into by the relevant authorities.

I've seen a list of the 33 payments reported as fraudulent which total £2,446. I've also looked at the statement copies Mr H has provided. And he's highlighted 12 payments back which by my calculation are just over £800. He hasn't explained why he would make these payments. While as he says the payment, he sent in September 2021 does seem to match one he's received the day before the later ones don't always. And in any event even if I was to accept that these were a return of some of the money for some reason Mr H would need to be able to explain why he's received all the money in the first place.

I've looked carefully at what he's said to Lloyds and our adjudicator about that. It's not impossible he was helping someone. But he's not been consistent, and he seems to have developed what he's said about things over time. And importantly he doesn't have a credible explanation for the largest payments involved here of £600 and £650 in February 2022. I note that in respect of the latter payment Lloyds' records show he was logged into internet banking three minutes after the payment was received and had moved the funds. That seems to contradict him telling Lloyds that he hadn't seen the payment.

Having balanced all the information I don't consider what he says to be reliable, and I find it most likely he was complicit in the fraudulent receipt of this money.

I appreciate that the figures from the report CIFAS has given him say that the loss here was also £2,446. But the primary thing I'm looking at here is whether there were grounds for the marker, and I won't be in a position to or need to reconcile any loss figure to decide on this complaint.

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

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

Given this I don't find Lloyds made a mistake in closing his account in line with the terms and conditions.

I appreciate what Mr H has said about the impact of the marker, for example when applying for a financial product. But I don't have a reasonable basis to require Lloyds to do anything further.

### **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 H to accept or reject my decision before 22 February 2023.

Michael Crewe  
**Ombudsman**