

The complaint

Mr I complains that Lloyds Bank PLC took money from his account and added a marker to CIFAS, the national fraud data base.

What happened

Lloyds said it received a report that a payment of £15,050 made into Mr I's account on 18 March 2022 had been obtained fraudulently. It returned the remaining funds of £12,527.57 on 8 April 2022 under an indemnity recovery to the sending bank. Lloyds closed the account and added the marker.

Our adjudicator didn't recommend that the complaint be upheld. She explained the high bar for adding a CIFAS marker. Mr I had said that this money was from his father who had sent 20,000 US dollars from abroad via an exchange office. And that he'd called his father who'd confirmed that the money was from him. But this didn't explain why the money came from an account at another financial business in this country and with a name as a reference that Mr I didn't recognise. His only explanation that this was the name of the person that exchanged the money didn't make sense. And the fraud report hadn't been retracted.

Mr I had provided documents he said show the money was from a property sale abroad and that it was sent to him. These hadn't been translated into English. Mr I said he was waiting for Lloyds in April 2022 or this service to request this. Our adjudicator said she found that difficult to understand if these did show proof of an international payment to his Lloyds account. She said that if Mr I was able to get the documents translated and for his father to contact the exchange office for an explanation of why the payment was sent to another individual's account first then this might assist.

Mr I wanted his complaint to be reviewed. He didn't accept that he was complicit in a fraudulent act. And said that he'd get the documents legally translated and hadn't done so due to the costs involved.

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 the evidence must be clear, relevant and rigorous.

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'm satisfied that Lloyds received a report that this payment was fraudulently obtained. I note Lloyds had contact with Mr I about it. He'd provided the documents about this I understand we've now had. He didn't get these translated even when he'd received a final response letter from Lloyds dated 19 April 2022 which didn't uphold his complaint and said he had "*not provided any acceptable evidence to challenge*" the fraud claim. He further appealed, and Lloyds sent another letter dated 26 April 2022 saying its position hadn't changed.

Mr I has now sent in translated versions of the documents which I've considered carefully. On the face of it these show that a payment of 20,000 dollars was to be made to Mr I following a property sale abroad. And that a payment of this amount was made on 17 March 2022 from abroad. It also seems that following the issue with his Lloyds account an intermediary involved with the transaction issued a document dated 12 April 2022 setting out the source of the money and that a named person/ company would be providing the money to Mr I in this country.

This translated documentation was also shared with Lloyds. It said that it didn't see how the documents explained the information about the person paying him the money. It also wanted to know if the money had been returned to Mr I.

I note from the documentation that the 'delivery address' for the payment was said to be 'Cash in hand'. The subsequent letter of 12 April 2022 states that payment to complete the transaction was made from the intermediary 'in cash'. And that the amount to be paid was going to be in US dollars or its equivalence in the country of the beneficiary. I note that wouldn't be inconsistent with the amount of the sterling payment in question here. But there is no reference I've seen to Mr I's bank details, to the money actually being exchanged and to how it would reach him other than in cash. At the time this letter was written he knew that the remaining part of money in his account had been returned by Lloyds and that it wanted an explanation about this payment. And I've not seen information about that or to explain why another third-party account would have been involved in the transaction. As has been pointed out that name shown on his statement narrative wasn't known to Mr I and the account holder made a report of fraud.

Mr I's explanation must be that someone involved in the transaction has acted fraudulently. He referred at one time to that being someone potentially in an exchange office. But as I say I can't see any record of such exchange and a payment being made to his account. The issue our adjudicator identified about that remains and in my view there is important information still missing to show that Mr I is entitled to the *specific* payment that came into his account. And as he seemed to have contact details for the intermediary involved here and had arranged the letter I think he's had sufficient opportunity to address all of this. I note Lloyds' suggestion that if he believed he had been the victim of fraud then he may want to follow this up with the relevant authorities. And that it would co-operate with this.

It's fairly up to Mr I to support his complaint with evidence. He reasonably needs to be able to show that he was entitled to the funds paid into his account. That's more than showing that his father had sent a payment intended for him. But would need to explain how that payment had been credited to his account at Lloyds. And via an unrelated third party who

has said that the funds were fraudulently taken from them, hasn't retracted that claim and had provided sufficient to their own bank for it to raise an indemnity recovery. So, I'm afraid I don't consider that Mr I has shown he was entitled to the specific payment into this account and that he was unwitting in what happened.

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

In light of this I don't think Lloyds acted unreasonably too in returning the remaining money to the sending bank and closing Mr I's account. I don't have a reasonable basis to require Lloyds to do anything further. I can appreciate that Mr I will be disappointed given what is at stake for him. If he doesn't accept my decision he remains free to pursue this matter in court and subject to any relevant time limits.

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 I to accept or reject my decision before 26 May 2023.

Michael Crewe
Ombudsman