

The complaint

Mr S has complained that Bank of Scotland plc (trading as Halifax) registered a marker against him at CIFAS, the national fraud database.

What happened

In April 2020, Mr S received two large payments into his account from an individual. Mr S then quickly spent the money with large bank transfers and the maximum allowed cash withdrawals in the following days.

In June 2020, the sender reported the payments as fraudulent. They explained they'd paid Mr S to make bets on their behalf. They said that over the weeks that followed, Mr S assured them that he'd made profitable bets for them, but he refused to give them proof of the bets or send them the winnings. Eventually, they realised they'd been defrauded.

Mr S said he'd been running a tips line, where customers would phone him for betting advice. He said he didn't place any bets, the customers did it themselves. Then customers only paid him if they won, sending him a share of their winnings as a fee for his advice. He said he'd run this with a family member to such success that they were on the cusp of setting it up as an official business. Halifax asked Mr S if he could provide any evidence of this, but he said he could not as everything was done over the phone. Halifax closed the account and registered a marker at CIFAS.

Our adjudicator looked into things independently and didn't uphold the complaint. Mr S asked for his case to be reviewed afresh. He was particularly keen for us to look at the sender's account, as he said the sender would have received a large amount of betting winnings before paying a fraction of that to Mr S, which Mr S said would show he was telling the truth. The complaint's been passed to me to decide.

I sent Mr S and Halifax a provisional decision on 14 December 2022, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to maintain this marker, Halifax are not required to prove beyond all reasonable doubt that Mr S did something wrong. They do need to have reasonable grounds to believe that he misused his account, which go beyond a suspicion or concern, and which have appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I currently think there are sufficient grounds for this marker to remain. I'll explain why.

Halifax received an official fraud report from another bank. And they could see that after receiving the disputed funds, Mr S acted quickly to withdraw the money or send it on, which then meant that Halifax couldn't recover it. So I can see why they had grounds to believe he might have misused his account.

Mr S said that these funds were fees owed to him as a share of the sender's winnings. But I've looked into the sender's account, including their historic statements and the sending bank's investigation. I can see that there were no corresponding credits for winnings in the weeks or months before or after they paid Mr S. There were certainly no winnings payments which were so large or numerous that the payments to Mr S would constitute only a fraction of them. This rather strongly goes against Mr S's assertion that these payments were a share of the sender's winnings.

We asked Mr S additional questions to the ones Halifax asked, to give him further chances to evidence that he was entitled to these funds. For example, we asked him for:

- The name of his business, and for the documents he prepared for Companies House when he was about to incorporate it*
- Evidence of things like adverts, a website, a social media page, messages or emails he sent out to promote this venture, and so on – as customers would need to have found out about his business somewhere, and would need to have been given his contact details in order to phone his tips line*
- Any evidence of his contact with the sender – Mr S told the bank that they had some text messages together*
- Evidence of any contact with any other customers, as at least some of them would have wanted to contact him in writing before risking their money on his betting advice*
- The documents he submitted to HMRC, such as invoices, receipts, tax forms, accountant's submissions, and so on, as if this was a legitimate venture then he would have been required to report the large amounts he was receiving to HMRC*
- Mr S told us he had an account with a bookmaker and followed a model in order to come up with his tips, so we asked whether he could evidence this and match it up to the advice he gave*

But Mr S did not provide any of this information, or any other evidence to support his version of events. The main thing he relied on was his assertion that the sender had received substantial winnings before paying him – but as above, that is not the case.

So Mr S has so far been completely unable to evidence his version of events, even though there was quite a bit of evidence he could have provided to show that this business existed, that it was a legitimate venture, and to show what sort of activity it was carrying out. And the evidence we do have, from the sender's account, goes against Mr S's testimony.

I've also considered Mr S's allegation that the sender put in a false fraud claim in order to cheat him out of his fee. But if they wanted to cheat Mr S out of his fee, they could have just not paid him in the first place. After all, there was no written contract – Mr S said they only had a "gentleman's agreement". It wouldn't make much sense for the sender to pay him, then falsely report the payments months later and hope that they hadn't been spent in all the time in between. And I've not seen any evidence which shows or substantiates that this was a false claim. The sender's statements are consistent with what they said happened.

In summary, Mr S received funds which were later officially reported as fraudulent. And he acted quickly to forward the funds on or withdraw them, meaning Halifax couldn't recover them once they were reported. His version of events does not seem likely. And he's not provided any evidence to substantiate what he's told us, despite all the evidence he could provide, and despite the fact that he would be required to keep some of this evidence if his venture were legitimate. Meanwhile, the evidence from the sending bank strongly goes against Mr S's testimony.

So based on everything I've seen, I think it's fair that the appropriate marker stays on Mr S's CIFAS record. It follows that I also think it's fair that Halifax closed his account, which they were allowed to do under its terms. This is a difficult message for me to give, and I know it's a difficult message for Mr S to receive. But given the evidence I have, and the balance of probabilities, I'm currently unable to reasonably reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 11 January 2023. But neither Mr S nor Halifax sent me anything new to consider.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above. That is: that I think the CIFAS marker and the closure of the account was fair in this case.

My final decision

I don't uphold Mr S's complaint in this particular case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 February 2023.

Adam Charles
Ombudsman