

The complaint

Miss S complains that Bank of Scotland plc trading as Halifax recorded a marker at CIFAS, the national fraud database, when it closed her account.

What happened

Miss S says she wasn't involved in any fraudulent activity and had lost her bank card. She'd later made a subject access request to CIFAS in September 2021, and this showed that a marker had been added in May 2020 when her accounts were closed. She says she's not been able to open an account at any other financial business because of the marker.

Halifax said that it hadn't made a mistake. And that it had added the marker because it didn't get a response from Miss S about transactions on the account. It said that a full investigation was carried out before the accounts were closed.

Our adjudicator recommended that the complaint be upheld, and the marker removed. He'd asked Halifax to provide information about the investigation including fraud notes, contact notes of any discussion with Miss S, account statements and details of the payments made into and from her account at the time. Halifax said it couldn't provide anything further than its customer notes which referred to Miss S needing to show entitlement to the funds and her identification. He said that he'd expect Halifax to retain the information that supported the application of the marker during the period it was registered. And he didn't think that Halifax had been able to show that there were grounds for the marker to be added.

Halifax disagreed and said that it had shown that there was contact with Miss S at the time and reported that its fraud department spoke with her on 14 July 2020 and that this would have included discussing the circumstances. Our adjudicator said he didn't think that this was sufficient and referred this complaint for a decision by an ombudsman. Halifax has since provided information that there were seven payments of £500 into Miss S' account on 9 May 2020 and not just one for £3,500 and so that this wasn't an isolated case. Halifax said that this should make a difference to our assessment.

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, Halifax 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 appreciate that Halifax considered the information request from our adjudicator to be extensive. But it's up to Halifax to show that it had grounds to add the marker and reached the required standard of proof. I note what Halifax has recently said about the payments. But that is from a recent email and not source information. Frankly I have very limited information about the payments reported as fraudulent, who reported them and why and what investigation was done. While it may have tried to contact Miss S there are no clear notes about what was discussed and why it didn't accept any testimony at the time. Although it's indicated to us that she'd need to show that the payments weren't fraudulent, her version of what happened is that her account was taken over. I don't have any clear evidence to refute that and about why that wasn't accepted.

I don't have reason to doubt based on what I've seen that there were grounds for suspicion at the time. But Halifax is reasonably required to support the marker with evidence. There is insufficient for me to find it's met the required standard of proof for a marker to be added.

Having said that it was a commercial decision as to whether Halifax wanted to offer Miss S an account. And based on what it's said it wouldn't be agreeing a future application by Miss S to any part of its business group. Again, that would be a matter for its discretion.

I agree with the suggested resolution of our adjudicator.

My final decision

My decision is that I uphold this complaint and I require Bank of Scotland plc trading as Halifax to remove the CIFAS marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 16 March 2023.

Michael Crewe
Ombudsman