

The complaint

Mr H complains that Starling Bank Limited withheld funds and registered information about him with the UK's fraud database CIFAS.

What happened

Mr H had an account with Starling. In October 2020, Mr H received a payment from a third party. In November 2020 Mr H received a further payment of £1,000 from another third party. The reference for the first payment was the name of the payer. The reference for the second payment was "car parts".

But Starling received reports that these payments were fraudulent. So it blocked Mr H's account and asked him for further information about the first payment.

Mr H told Starling he was selling car parts. He says he had sold some car doors, and sent Starling what he said was a contemporaneous note confirming the sale of the doors and fittings in return for £1,000 by bank transfer.

Starling completed its review in November 2020, and returned both payments to the payers. Mr H then contacted Starling again. He claimed he'd confused the payment – and that now he'd properly looked into things he realised the payments related to cryptocurrency transactions. He says he'd bought cryptocurrency on one exchange and sold it on another. He's told us he was earning money by buying and selling a stable coin pegged to the US dollar at a margin of 5%-11%.

He sent Starling screenshots in connection with these transactions. In February 2021, Mr H said he'd had difficulty applying for a mortgage. In March 2021, Mr H said that another bank had investigated other transactions that had been reported as fraudulent and agreed to remove adverse information it had registered with CIFAS. In May 2021, Starling registered its own information with CIFAS. Around this time, Mr H tried to apply for a further mortgage. He was told the application had failed because of adverse information recorded against him.

Mr H thinks Starling has treated him unfairly.

Our investigator initially looked at this. He thought Starling should pay Mr H the funds back, plus compensation for the trouble and upset it had caused. Starling agreed to the recommendation. Mr H did not. The complaint was referred to me to decide.

I issued my provisional findings on this complaint on 20 April 2023. I concluded that based on what I'd seen, Mr H had given incorrect information to Starling. As such, it hadn't acted unfairly in returning the funds to the sender. And while I thought that Starling should now remove the information it had registered with CIFAS, I didn't accept it was fair to make Starling pay Mr H further compensation given what had happened ultimately stemmed from his failure to give Starling accurate information.

I said I'd consider any further information I received by 17 May 2023.

Mr H doesn't agree with my conclusions. He doesn't think it's fair that he loses all the money. He says he has himself been the victim of fraud here – and that unless he was personally involved in fraud, he should get the money back. He says he's now at risk of losing his home, and asks when the marker will be removed.

Starling hasn't said anything further.

I've therefore reviewed the complaint afresh.

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.

In my provisional decision I said:

“Financial businesses, like Starling, are subject to a number of legal and regulatory requirements. These include having processes in place to combat financial crime. Where Starling receives a report about a payment into an account, it may need to investigate the payment – and may need to block the account until it is satisfied.

The terms and conditions that applied to Mr H's account allowed it to return payments to the account that sent them in in certain circumstances. This included where there was a dispute about a payment and Mr H wasn't able to provide Starling in good time with satisfactory evidence of why the payment was not made in error.

“Here Starling received a report about a payment into Mr H's account. But when Starling asked Mr H about this, Mr H said the payment was for car parts. He provided a written receipt for the goods. It was only after Starling had returned the funds to the sender that Mr H explained it in fact related to a cryptocurrency transaction.

“We've asked Mr H about this. He says he was new to cryptocurrency trading and was told that he shouldn't include references to cryptocurrency in his transactions because this might lead to the payments being stopped by his bank.

“With this in mind, I don't accept Starling acted unfairly when it returned the payments to source. It had received reports that payments into Mr H's account were the result of fraud, and Mr H gave Starling information about the account that he accepts wasn't correct.

“I appreciate that Mr H subsequently gave a substantially different account of what had happened – and provided evidence of the transactions through the cryptocurrency exchange. But Starling had already returned the funds at this point. So this doesn't affect my conclusion.

“I appreciate Mr H may now have difficulties recovering the funds from the purchaser of the cryptocurrency. But had Mr H been open about the nature of these payments from the outset, it's quite likely none of what followed would have happened.

“I've next turned to the registration of information with the fraud database CIFAS. Starling has said the information it registered with CIFAS was for “misuse of facility”. This is because Mr H used his account to receive fraudulent funds. To file this marker, Starling doesn't need to prove Mr H is guilty of a crime, but they must show that there are grounds for more than mere suspicion or concern. There needs to be reasonable grounds to believe that an identified fraud or financial crime has been

committed or attempted; and the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.

“Starling has provided us with reports from the third parties. Given the information I’ve seen, I’m satisfied that the senders of the funds were the victims of fraud – and that Mr H received these funds into his account. But that on its own isn’t enough for Starling to load a CIFAS marker. Starling needs to be satisfied Mr H received the funds unwittingly.

“Starling asked Mr H for information about one of the disputed payments – and Mr H, initially, gave what appears to be false information about the transaction. Mr H accepts this information was incorrect. And so it follows that it was fair for Starling to conclude that Mr H was complicit in receiving the fraudulent funds.

“But Mr H has, subsequently, provided a lot more information about the transactions. He’s sent us evidence that the payments were made by third parties through a peer-to-peer cryptocurrency exchange. It appears the cryptocurrency was held by the exchange until the third party had confirmed payment by bank transfer – at which point Mr H could release the cryptocurrency to the other party. Mr H has provided screenshots relating to these transfers, which includes chats and a screenshot of a bank transfer from the alleged victims. He’s also provided a screenshot showing the original purchase of some of the cryptocurrency from another site.

“I’m mindful that Mr H also had similar issues with another business – which ultimately removed its own CIFAS registration after Mr H demonstrated the transactions were genuine.

“With all this in mind, while I acknowledge the concerns that Starling had with the information Mr H initially provided, based on what I’ve seen I think it’s most likely Mr H was engaged in genuine cryptocurrency transactions. And once Mr H realised the consequences of providing incorrect information, he gave Starling the correct information about these transactions. By the time Mr H provided all the information, the true position had become clear. So I think Starling should remove the information it recorded with CIFAS. I can understand why Starling might have had reservations considering Mr H changing the purpose of the payments and the evidence provided. But I think that at the time Mr H provided this new evidence it no longer met the bar to register the marker.”

I’ve carefully considered what Mr H has said in response to my provisional decision. I reach the same conclusions for the same reasons. I recognise that Mr H may have been the victim of fraudsters here: he’s transferred cryptocurrency to someone else, but hasn’t received the proceeds of the sale as these have been transferred back to the payer. But that’s not Starling’s fault. Starling asked Mr H what the purpose of these payments were, and Mr H gave Starling information that was incorrect. While Mr H subsequently told Starling the truth, Starling had already returned the funds by that point. I don’t accept it would be fair for Starling to now reimburse Mr H.

I’ve gone on to consider whether Starling needs to do anything more to put things right. In my provisional decision I explained that while I’d tell Starling to remove the information it registered with CIFAS, I wasn’t minded to tell Starling to pay Mr H anything more given that everything that happened stemmed from Mr H’s failure to give Starling correct information about the transactions.

I’ve considered Mr H’s further comments about this. He’s emphasised the impact this all had on him, including stress and the difficulties he’s had finding accounts elsewhere. He feels

he's been honest and cooperative, and shouldn't lose out because of what he sees as one mistake.

I have some sympathy with Mr H and don't doubt he's had a difficult time.

But I've found that Mr H chose to hide the purpose of the payments through his account. It is not surprising that Starling had concerns. In the circumstances, I don't accept it would be fair to tell Starling to pay Mr H compensation.

Similarly, while I accept that the information recorded with CIFAS may have affected Mr H's ability to get a mortgage, I also think it's likely that any mortgage lender would have needed to assess Mr H's income before deciding to lend. Given how Mr H described his income on his statements I'm not satisfied that if everything had happened as it should have done Mr H would necessarily have been able to get a mortgage at that time. He also says that he now faces eviction from his home – though the information he's sent me doesn't show this is in any way connected to the information recorded against him.

So while I've considered Mr H's further comments. But they don't change my conclusion.

In all the circumstances, I think Starling should remove the adverse information it recorded with CIFAS. But I don't accept Mr H should get more.

Putting things right

Starling Bank Limited should remove the adverse information it recorded about this account with CIFAS.

My final decision

I uphold this complaint. Starling Bank Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 June 2023.

Rebecca Hardman
Ombudsman