

The complaint

Mr W has complained that Starling Bank Limited registered a marker against him at CIFAS, the national fraud database.

What happened

In October 2022, Mr W received a series of payments which were later found to be the proceeds of fraud. He quickly withdrew the money in cash or forwarded it on.

Mr W initially said the money was from a friend who owed him, and provided a screenshot of a conversation with one of the payers where they agreed to send him money. He said he couldn't provide any other messages or context as they'd blocked him. He then claimed he'd been hacked and lost his card, and someone else must've been using his account. Starling looked into this, but found that Mr W had most likely authorised the outbound payments involved himself. They closed his account and registered a marker against him at CIFAS.

Mr W finally said he'd been added to a cryptocurrency investing group via a messaging app. He thought it looked legitimate and sent them some of his own money to invest. He gave them his account number and sort code to send his profits, and clarified that he hadn't given anyone his security details or access to his account. He'd thought the money he'd been receiving was his crypto profits. He'd sent it on because they told him there'd been a banking system failure and they needed the money back, but had promised a huge return if he forwarded on the money. He didn't know any of the people who paid him. He didn't have any evidence as he said the investors since removed him from the group and he deleted the app, so all the messages were gone.

Starling adjusted the marker to reflect that Mr W may have been acting as a money mule on a third party's instructions, rather than directly committing the fraud. But they didn't agree to remove the marker entirely. They maintained that Mr W had received and spent fraudulent funds, and had no evidence he was entitled to the money.

Our investigator looked into things independently and didn't uphold the complaint. Mr W asked for an ombudsman to look at the case afresh, so the complaint's been passed to me to decide.

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 order to register this marker, Starling were not required to prove beyond all reasonable doubt that Mr W had done something wrong. They did need to have reasonable grounds to believe that he'd misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I think Starling did have sufficient grounds to register this marker. I'll explain why.

Starling received a number of official fraud reports from other institutions. This showed that the money Mr W had been receiving and spending was not from a friend, nor investments, but from victims of fraud who'd been deceived into paying him. Mr W then acted very quickly to spend this money, meaning it couldn't be recovered.

I've considered Mr W's initial testimony – that this money was from a friend who owed him. But it came from lots of different people, not one friend. There's no evidence of him ever lending this friend money. He's not provided any evidence that he had a friendship with any of these people. And he now says that this testimony was not true and that he in fact didn't know any of the payers. So I don't find that testimony to be likely or plausible.

Next, I've considered Mr W's claim that he lost his card, was hacked, and did not carry out any of the activity involved. But I can see Mr W still had his card afterwards, as he used it for his own activity after this incident. It's also not clear how a third-party thief would've known his PIN. Similarly, the online payments were made using Mr W's phone, which was the only device registered to the account, which he'd registered using a video selfie of himself and his photo ID. Mr W still had this phone afterwards, as again he used it for his own activity after this incident, so it wasn't stolen. And he's confirmed he didn't record or tell anyone his security details nor give anyone else access to his account, so there's no likely or plausible way a thief could've accessed his app without his permission. As such, the only likely and plausible possibility remaining is that Mr W authorised the use of the account.

I've then considered Mr W's latest testimony – that he thought this was part of a legitimate investment group. Mr W says he can't provide any evidence that this group existed, or that he was in contact with them, or what was said, as he says all the messages have since been deleted. So I've thought carefully about what's most likely to have been the case.

Mr W says this all started when he sent the group about £250 of his own money to invest, so he thought the payments he was receiving were his profits. But there's no record of Mr W making that initial investment – for example, it's not reflected on his statements. We asked Mr W for evidence of this investment, but he only sent us a screenshot of a payment he made several days *after* he received and spent the fraudulent funds – not before. So there's no evidence he made any initial investment beforehand, or that he had any good reason to think the money he was getting was his profits.

Further, it's not particularly plausible that Mr W would send large sums to people who'd randomly added him to a messaging app group, nor that he would really think it was legitimate to receive all these payments from various people who he didn't know. And it's not clear why Mr W felt the need to move the money on so quickly if he thought these were his legitimate profits – though it would make sense if he were willingly part of the fraud or acting as money mule.

Finally, I've considered the possibility that Mr W was either directly involved in the fraud or acting as a willing money mule. That fits very well with the evidence at hand – Mr W received multiple lots of funds which have been confirmed as fraudulent, and either spent the money himself or moved it on quickly such that it couldn't be recovered. His testimony has been highly inconsistent and implausible. And he's not provided any substantial evidence to back up his testimony or show any entitlement to the money he spent, even where such evidence should be straightforward to provide – such as evidence of his initial investment.

When Mr W first spoke to Starling, he gave them a screenshot of a text conversation he had with one of the fraud victims, where they agreed to send him money. This indicates that Mr W was in direct contact with at least one of the victims, which suggests that he may have even been actively involved in defrauding them.

Similarly, Mr W withdrew the bulk of the fraudulent money in cash. So it appears that Mr W was the main beneficiary of the fraud. If Mr W was an unwitting participant in the fraud, then it wouldn't make sense for the fraudsters to let him keep so much of the money himself. But it fits well with the possibility that Mr W was a knowing and willing participant in the fraud.

Mr W opened this account some time before the fraud took place, but used it for little other than receiving and moving on money. This would be most unusual for an account opened for genuine use – but it does fit well with how an account might be used for fraud.

Lastly, I can see that at least one other institution found that Mr W had misused his facility in a similar way, so this does not appear to have been an isolated incident. And I've not seen any evidence that makes it seem implausible or unlikely that Mr W could've knowingly and willingly helped to receive and pass on fraudulent funds.

In summary, Mr W received the confirmed proceeds of fraud, spent or moved it on quickly such that it couldn't be recovered, and appears to have been the main beneficiary of the fraud. His testimony has been contradictory and implausible. He's not been able to evidence he was entitled to the money. And the way the account was used significantly supports the possibility that he was knowingly and willingly involved in the fraud. So based on everything I've seen, I think it's fair that Starling closed Mr W's account and registered a marker at CIFAS. This is a difficult message for me to give, and I know it's a difficult message for Mr W to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

My final decision

For the reasons I've explained, I don't uphold Mr W's complaint.

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

Adam Charles
Ombudsman