

The complaint

Mr S has complained that Home Retail Group Card Services Limited (trading as Argos) registered a marker against him at CIFAS, the national fraud database.

What happened

In late 2019, Mr S paid a cheque to his Argos credit card to clear the balance and bring it into credit.

The cheque was returned as fraudulent. Argos spoke to the sending bank, and got confirmation that they thought the cheque was not genuine. Argos then spoke to Mr S, and decided to close his account and register a marker at CIFAS.

Mr S explained at different points that the cheque was either his payment for professional work he'd recently done for the sender, or a personal payment, or was for work he'd done around a decade or more ago. He had no evidence of the work he'd done, nor of any contact with the sender, and he said he'd since fallen out with the sender so it wasn't possible to contact them now. He said the sender had since paid him, but this was in cash which he'd never deposited anywhere and had since spent, so he couldn't evidence that either.

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

I sent Mr S and Argos a provisional decision on 31 January 2023, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to register this marker, Argos were not required to prove beyond all reasonable doubt that Mr S 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 currently think that there are sufficient grounds for this marker to remain. I'll explain why.

Argos received a report from the sending bank that Mr S had attempted to pay off his credit card using a stolen cheque. They were entitled to rely on this report.

I do not think it is likely or plausible that the sender made a false report. Mr S said the sender paid him afterwards by a different method. And if the sender had cancelled the cheque in order to avoid paying Mr S, then I don't see why they would then just pay Mr S anyway.

If the cheque was for work Mr S did, then it would've been quite straightforward for him to evidence he was entitled to the funds. But so far, Mr S has not given us any evidence at all of his entitlement.

If Mr S had carried out work for the sender, then he would have evidence of this as a matter of course. Given Mr S's line of work, such bookkeeping would be standard. And he was required to keep records for things like tax purposes, which again Mr S would've known. Yet Mr S has been unable to provide any evidence whatsoever that this work was carried out.

Similarly, Mr S had apparently been chasing this debt for some time – around six months, or around ten years depending on which version of events we use. And he said he was in contact with the sender afterwards to receive payment by another method. So there should be records of this, like bills he sent, chasers by letter or email, text messages, and so on. Yet Mr S has not provided any evidence of any contact with the sender. He also says he's not able to give us any evidence of the alternative payment as it was all in cash, he'd never logged or deposited it anywhere, and he'd spent it. That's really quite unusual – again, if this was to clear a longstanding professional debt then I'd expect Mr S to have some record of this, not least given the relevance of bookkeeping in his line of work.

While this is only a minor point, it is also notable that the cheque is addressed to Argos Card Services, not Mr S. It would be highly unusual for someone to pay for professional work by writing a cheque to the professional's personal credit card provider.

I'm afraid I do also need to point out that Mr S's testimony has been inconsistent and contradictory. For example, at different points he's said notably different things about why this money was owed to him and about what time period the debt came from. This makes it very difficult for me to take any of his versions of events as being correct.

In summary, Argos received an official report of fraud from another financial institution. Mr S has been unable to provide any evidence that he was entitled to the funds, despite all the evidence he could and should be able to provide. His testimony has been contradictory, and what he's told us is not very likely or plausible. So it seems fair that Argos closed his account and registered the appropriate marker with CIFAS. 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 currently have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

I have written this as a provisional decision, rather than a final decision, in order to give Mr S a further opportunity to evidence his entitlement to the funds. As before, this could be things like records showing the work he carried out for the sender, communications with the sender discussing the money owed, or contact from the sender now confirming the validity of the cheque. I'm afraid that without such evidence, I don't currently see that the marker should be lifted. Mr S will need to make sure that we have received any further evidence before the deadline on 28 February 2023. After that, I will make a final decision.

Lastly, I understand Mr S was unhappy that Argos didn't inform him beforehand that they were going to register a marker at CIFAS. But I should explain that they were not required to inform him beforehand.

I then sent a second provisional decision on 28 March 2023, changing the outcome in response to further information that was provided. In that decision, I said:

In response to the previous decision, Mr S's representative provided a letter from the sender of the cheque. The sender included a copy of his debit card as identification. He confirmed he had genuinely sent the cheque to Mr S, had made it payable to Argos at Mr S's request, and had later paid Mr S in cash instead.

We forwarded this to the sending bank, who confirmed that the provided debit card was genuine and active. It appeared that this letter really came from their accountholder. They explained that the cheque had been suspected as being fraudulent or counterfeit, mainly due to the signature differing from the one on record. They had tried to contact the sender to confirm whether he'd really sent the cheque or not, but they couldn't get through to him and didn't get a response. So the cheque was returned as ingenuine.

Now that the sender has confirmed he really did mean to pay Mr S's credit card with this cheque, it follows that Argos should remove the resulting CIFAS marker.

I've considered whether Argos should pay Mr S any compensation for registering this marker. But while I know this may come as a disappointment to Mr S – and while it is not my intention to disappoint him – I don't think they should. We'd only award compensation if we thought the business had done something substantially wrong. But here, Argos had sufficient grounds to close Mr S's account and register the CIFAS marker based on what they knew at the time.

As I explained in my previous provisional decision, Argos received an official report that the cheque had been returned under fraud or counterfeiting concerns, and they confirmed this with the sending bank. Until now, Mr S did not provide any evidence that he was entitled to the money, even when such evidence should have been easy to provide. His testimony was notably inconsistent and unlikely, and the way the cheque was addressed was highly unusual. So it seems reasonable that Argos registered the marker.

Now that I'm directing Argos to remove the marker, I hope this will help Mr S get things back on track.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 11 April 2023. Mr S's representative confirmed they had nothing more to add. Argos asked for a copy of what the sending bank said, which our investigator forwarded to them. But they didn't add anything further to that.

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 in response to the second provisional decision. So having reconsidered the case, I've come to the same conclusion as in my second provisional decision, and for the same reasons as set out above.

Putting things right

I direct Home Retail Group Card Services Limited to remove the CIFAS marker in dispute.

My final decision

I uphold Mr S's complaint in part, and direct Home Retail Group Card Services Limited to remove the CIFAS marker in dispute.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 May 2023.

Adam Charles
Ombudsman