

The complaint

Mr Q complains that Starling Bank Limited added a marker about him at CIFAS, the national fraud database, when it closed his account.

What happened

Mr Q says he was paid £300 into his Starling Bank account on 29 June 2022 by a family member. He was then told that the payment was disputed. He says that the family member had repaid money owed to him and was going to retract the claim as this was a mistake. He is unhappy that his account was closed, and the marker was added.

Starling Bank said it hadn't made a mistake. It received a report that this money had been obtained fraudulently. It had been withdrawn from Mr Q's account. It has asked him about the payment on 4 July 2022 and for evidence about it. Starling Bank told Mr Q that the sender would need to retract the claim with their bank. Based on what Mr Q told it checks had been made with the sending bank and showed that no retraction had been made. So, it added the marker and closed Mr Q's account.

Our adjudicator didn't recommend that the complaint be upheld. Mr Q had informed Starling Bank that the dispute had been withdrawn on 4 July 2022. Although he had provided what he says was a screenshot of an online conversation with the sender there was no evidence to show that the sender had actually withdrawn the claim. And Mr Q, who is now represented in this complaint, has since said that the sender couldn't withdraw the claim because their account had been closed. So, it wasn't clear what had happened. After she issued her view on the complaint the representative had then provided a letter it said was from the sender retracting the claim. She said it would have been helpful to see evidence that this had gone to the sending bank. And she still thought that Starling Bank had acted reasonably.

Mr Q didn't agree and wanted his complaint to be reviewed. His representative said that it wanted to know what proof it could provide that the letter was submitted to the sending bank. It said that proof of posting of this the first time hadn't been kept safe but showed it had been sent by recorded delivery on 9 May 2023. And that it believed that the benefit of the doubt has to be given to Mr Q because of his vulnerable situation.

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.

This service provides informal dispute resolution, and we aren't a court and so don't take evidence on oath and cross examine witnesses. If Mr Q doesn't accept my decision he remains free to pursue this in court subject to any relevant time limits.

I need to consider whether the report to CIFAS was made fairly. On this point, Starling Bank 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. The evidence must be clear, relevant and rigorous.

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 can see that Mr Q provided a letter of authority to his representative dated 6 January 2023 and that the representative pursued a complaint on his behalf. Starling Bank issued final responses on both 30 January and 2 February 2023, and it said that the closure of the sender's bank account wouldn't prevent that bank retracting a claim. I note that the representative had referred to the potential of getting a witness statement and also mentioned that on the complaint form for this service.

The letter that Mr Q says is from the sender to their bank doesn't appear to be dated or to provide that person's bank details. It doesn't comment on why the claim was either made or retracted. I know that our adjudicator said that it would have been helpful to have some proof of sending. I've seen that has been done very recently.

It doesn't seem to be in dispute that the sending bank hasn't confirmed that the claim was retracted. Starling Bank has made clear that it would want to see this. It gave Mr Q the opportunity to demonstrate that at the time of the payment and when he made his complaint. He didn't do so or show he was entitled to this money. I think he is fairly responsible for the activity on his bank account and especially as he says he had a basis to receive these funds and also has as Starling Bank stated used the money.

Starling Bank says that it applied the CIFAS marker because Mr Q received fraudulent funds into his account. So, I've looked at whether Starling Bank was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

I've reviewed Mr Q's account of events and the evidence he has provided, and I think he's had a reasonable opportunity including during the investigation of this complaint to provide this. I'm satisfied that Starling Bank had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr Q received funds into his account that remain reported as fraudulently obtained.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Starling Bank had grounds to believe that Mr Q had used fraudulently obtained funds based on the evidence it had.

In light of this I can't see it was unreasonable for it also to close his account under its terms and conditions. I appreciate what is said about Mr Q's position and the impact of the marker and that he will be disappointed by this outcome.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 21 June 2023.

Michael Crewe
Ombudsman