

The complaint

Mr S has complained Bank of Scotland plc, trading as Halifax, lodged a fraud-related marker on the industry fraud database, CIFAS, in his name.

What happened

In 2021 Mr S was told by Halifax that they were closing his account. They also lodged a fraud-related marker on his record with CIFAS.

Mr S found that other accounts he held were closed and found it difficult to open a bank account. This increasingly caused him distress as he couldn't receive his benefit income so he was in serious financial difficulty.

Mr S complained and asked Halifax to remove the marker. Halifax didn't feel they'd done anything wrong and refused to remove this.

Mr S brought his complaint to the ombudsman service.

Our investigator reviewed the evidence and believed Halifax didn't have enough to show Mr S was involved in the fraud. She asked Halifax to remove the CIFAS marker.

Halifax didn't agree with this outcome and continued to believe they had sufficient evidence to show Mr S had been complicit in fraud. Mr S's complaint has been referred to an ombudsman.

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.

Having done so, I've reached a similar outcome to our investigator. I'll explain why.

It is clear what the requirements are prior to lodging a marker. Specifically:

"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted.

The evidence must be clear, relevant and rigorous."

So Halifax must be able to provide clear evidence that an identified fraud was being committed and Mr S was involved.

There's also a requirement that Halifax should be giving the account holder an opportunity to explain what was going on.

I've seen the evidence provided by Halifax. This confirms one of their customers told them she'd been defrauded, and payments had been sent to Mr S's account. She accused a family member of misusing her account to do this.

Mr S has told us he'd met someone when he was living at a hostel who asked if he could get payments sent to Mr S's account. He then arranged to withdraw cash and gave this over to this acquaintance. He was also able to share a message with showed his concern with this acquaintance after Halifax had closed his account and he'd been made aware that this was all fraudulent.

The circumstances of what Mr S was told was going on isn't that far from the case – in that money was being paid into Mr S's account by the person that this acquaintance was related to.

He's also told us of his serious financial issues over the last year and his desperation to get things sorted.

I've considered all of this. I'm convinced by his testimony that he wasn't aware of what may have been going on.

I say this because Halifax has been able to provide nothing which I believe meets the test set by CIFAS to show Mr S's complicity. I don't dispute fraudulent funds were paid into Mr S's account and I'm sure the acquaintance did this deliberately to minimise being caught and to ensure that someone else would be losing out.

Halifax is concerned that Mr S had a history of potential beneficiary fraud. They'd warned him in 2016 that they'd close his account if there were similar concerns in the future. There seems to me to be quite a period between 2016 and 2021 (nearly five years). And whilst I don't dispute Mr S may well have benefitted by perhaps as much as £10 this time around, or that Halifax had the right to close Mr S's account, I can't see that Mr S knew this acquaintance was committing fraud or that he was complicit.

I note Halifax did contact Mr S to question his entitlement to the money. It took them many months to do this. Halifax doesn't seem to have been able to successfully update their records showing Mr S's address.

I've been surprised by Halifax being unwilling to remove the marker. They've also stated they don't believe the problems Mr S is having in opening an account is caused by them but rather by the condition of his credit record. This seems to mark quite a level of unconcern for someone who, as our investigator confirmed, is vulnerable and having difficulty managing both financially and emotionally. I appreciate that Halifax has been subject to Mr S's anger over what has happened, but I'd expect more awareness of his frailty to be shown.

Putting things right

The requirements around banks lodging markers at CIFAS include there being sufficient evidence that the customer was aware and involved in what was going on. In this case I don't think this exists from reviewing the evidence around payments made into Mr S's Halifax account.

On this basis I believe it would be fair and reasonable to ask Halifax to remove the CIFAS marker from Mr S's record.

I'm also going to ask Halifax to pay Mr S £100 for the distress caused in having a marker on his record which shouldn't be there. I'm aware our investigator hadn't asked Halifax to do this. However as this is a relatively small amount and Mr S is anxious to have his case concluded, I believe Halifax will appreciate why I've not completed a provisional decision.

My final decision

For the reasons given, my final decision is to instruct Bank of Scotland plc, trading as Halifax to:

- Remove the CIFAS marker; and
- Pay £100 to Mr S for the distress caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 May 2024.

Sandra Quinn
Ombudsman