

## The complaint

Mr O complains that Starling Bank Limited (Starling) closed his account and registered a Cifas marker against him without due cause.

## What happened

On 3 August 2021 Mr O received a £500 payment into his bank account with Starling. Within the hour, Mr O transferred these funds to a bank account he held elsewhere.

The following day Starling received a report from the sending bank which indicated that the sender, 'A', had been the victim of an impersonation scam.

Starling then restricted Mr O's account and contacted him asking him to outline his relationship with A and the reason for the payment. Mr O exchanged messages with Starling over the following few months where Starling asked him for information about the transaction to help it investigate things further.

During this time Mr O provided Starling with the following information:

- He'd asked for financial support from a friend, 'B', to pay for tuition fees. B had agreed to help and they'd discussed this over the phone.
- B then made a payment to Mr O via A. Mr O confirmed he didn't know A directly.
- B had sent Mr O a screenshot of a successful £500 payment to Mr O's account. Mr O shared a copy of this screenshot with Starling.
- Mr O also sent Starling a screenshot of a message he'd sent to B showing that the payment had been disputed. Mr O said he had not been able to reach B at that time.

Mr O also offered to send the £500 back. However, he later advised he didn't have sufficient money to do this.

Mr O didn't respond to Starling's requests for his friend's details including their full name or copies of his bank statement from the account he transferred the funds to.

Starling then advised Mr O on 13 October 2021 that it was closing his account. It also loaded a Cifas marker against him on the National Fraud Database.

In March 2023 Mr O asked Starling to review its decision. He advised that he had contacted a friend who he met on a social media platform for support with his tuition fees. Starling asked for evidence of the conversation relating to the payment prior to 3 August 2021 but Mr O said this was done over the telephone. Mr O sent pictures of messages between him and his friend on 6 August 2021 which were about the payment. Starling also asked Mr O for copies of the invoice or statement showing the funds were paid as tuition fees. This wasn't supplied and so Starling advised Mr O it would not remove the Cifas marker but said it would review this if Mr O provided evidence to confirm ownership of the funds.

Mr O later sent evidence he'd paid tuition fees in January 2022 but Starling said this was insufficient for it to revise its position. Mr O felt he'd provided all of the evidence he could and was unhappy with Starling's investigation.

Starling looked into his complaint but didn't uphold it. So, Mr O brought his complaint to our Service. He told us the Cifas marker was impacting his health, job opportunities and ability to get financial products. He provided evidence in support of this.

Mr O also provided a bit more context to his situation back in 2021 explaining he was in financial difficulties during his studies and reached out for help via a social media platform to a group of people in similar circumstances. One individual, B, called him and offered to loan him the money on the proviso Mr O paid it back once he was working. After a few weeks the money was sent and B messaged Mr O saying he'd transferred the money, including a screenshot confirmation message of the payment. Mr O also provided our Service with a screenshot of a conversation with B that predated the payment he'd received.

Our Investigator looked into things and was of the opinion there was insufficient evidence to load the marker. They felt Mr O had evidenced substantive parts of his version of events. They felt Starling ought to remove the Cifas marker and any other linked fraud markers as well as paying Mr O £250 for the distress and inconvenience the marker had caused.

Starling disagreed, it noted that Mr O didn't tell it back in 2021 that he'd arranged the payment via a social media group and chose not to send it earlier messages he'd received from B that predated the payment despite requests. It said there was no clear link between the tuition fee payments and the funds Mr O had received.

So, the complaint was passed to me to decide. After reviewing things, I thought it was likely I'd reach a different outcome to the Investigator, so I issued a provisional decision to ensure both parties had the opportunity to respond before a final decision was made. In brief, I didn't uphold the complaint. In particular, I noted there was missing information from Mr O's initial version of events, information had since been provided that Mr O said he didn't have and no evidence was provided to link the exited funds to his tuition fees.

Starling didn't provide any further representations. Mr O responded and raised a number of points, including:

- He did tell Starling he didn't have evidence because he thought he'd sent all the screenshots already. He thought he'd sent screenshots of most of his chat with B but the relevant message including the screenshot that predated the payment saved in his drafts. He was mentally unstable at the time battling with the stress and anxiety caused by their blocked account, limited time to pay tuition fees and Covid-19. He did not understand the gravity of the requests being made. This was not a deliberate attempt to deceive but human error.
- He was reluctant to send details of the bank account where he'd sent the funds as he was scared they'd reclaim the fund and he'd been unable to pay his tuition fees. He didn't understand the impact this would have on his life.

Mr O also provided evidence tuition fees were paid from the bank account he'd sent the money to. These were paid on 15 October 2021.

I am now in a position to issue a final decision on this complaint.

### **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.

The relevant considerations here are set out by Cifas: the fraud marker database controller.

In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards at the time of the loading were:

1. That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.
2. That the evidence must be clear, relevant and rigorous such that the member [Starling] could confidently report the conduct of the subject [Mr O] to the police.

In addition to the Handbook's burden of proof, Cifas released guidance to its members in March 2020 providing best practice guidance when filing markers against 'Money Mules' against the National Fraud Database. As Mr O had received fraudulent funds into his account held with Starling, I find that the guidance is relevant in these circumstances.

I'm satisfied that Starling received a report from the sender's bank informing it that Mr O had received fraudulent funds into his account. I have seen no evidence to dispute this and note Mr O didn't know the sender. So, I believe the first burden of proof has been met.

This means that the matter at the heart of this complaint is whether the second burden of proof has been met. This requires more than mere suspicion of the consumer's willing involvement of the alleged activity to load them to the database. It requires "clear" and "rigorous" evidence that would warrant reporting the subject to the police. This is further supported by the 'Money Mule' guidance that sets out that *"You must have evidence to show that the consumer was aware that the payment they were receiving was, or might be from an illegitimate source."*

Broadly, it also highlights the need to consider evidence supplied by the consumer and says that contact should be made with them prior to deciding to load the marker. This is typically to establish if the consumer has themselves been victim to a fraud or has been duped into unwittingly laundering funds through their account.

Mr O received fraudulent funds into his account and very quickly transferred these out.

Mr O's version of events, which has been consistent throughout, is that this was a loan for tuition fees and he was unaware that the funds were from an illegitimate source. But Starling said Mr O was given sufficient opportunity to provide evidence to support his version of events and he didn't do so. So, it felt its loading of the negative marker was fair.

I can see that prior to loading the marker and closing the account Starling approached Mr O to better understand the circumstances surrounding this payment - which is what I'd expect.

It asked Mr O a series of questions and repeatedly requested supporting evidence over the following months. What Starling was seeking here was evidence to corroborate Mr O's version of events.

I note Mr O did send Starling some evidence which showed that someone had messaged him regarding the payment, and evidence that he told that person the bank was querying the payment subsequently. But I don't find this evidence very persuasive here given that it post-dated the payment and could also have been provided by someone complicit in fraud.

What's clear is that Mr O omitted certain information from his initial explanation of events to Starling in 2021. In particular, not mentioning the social media group or why he wasn't able to provide his friend's details. And it was only when he came to our Service that Mr O provided any evidence of a conversation with B about the payment prior to it being made or explained why he didn't know B's details. This is despite the fact he was clearly asked for this information/evidence by Starling back in 2021. So, I don't think it was unreasonable for Starling to have found this lack of evidence and explanation suspicious at that time.

Mr O also didn't provide any evidence to support his assertion that the funds were for tuition fees. This is despite the fact Starling asked him on more than one occasion to show evidence of the account where the funds were sent. Whilst I appreciate his university bill may not yet have been paid, I think it was reasonable of Starling to expect Mr O to have been able to provide evidence he was enrolled at university and would have bills upcoming. His bank statements and university information ought to have been readily available to him at that time. So, in 2021 the evidence showed Starling Mr O received fraudulent funds into his account, immediately transferred them out and refused to provide evidence of where these funds then went. And Mr O then wouldn't provide information that ought to have been readily available to him to support his version of events. Given this, I think the loading of the negative marker and the closure of the account was fair.

The question that remains therefore is whether Starling ought to have removed the marker when Mr O provided further supporting evidence in 2023 and/or whether it should now remove the marker based on the additional evidence he's since provided our Service. But having carefully considered everything, I'm not persuaded that it should – I'll explain why.

The question I am considering here is whether the evidence suggests Mr O knew the payment was, or likely was, from an illegitimate source. Mr O said he did not, but I'm not persuaded by this. I say this noting the lack of substantive evidence to support his testimony and the inconsistencies in his evidence to date.

Mr O has now shown our Service screenshots which indicate the £500 payment was used towards tuition fees as he explained. I note that this evidence doesn't directly show whether he knew the funds were from an illegitimate source, but it could have added weight to his version of events if it had been shared sooner. I recognise Mr O has provided an explanation for his hesitancy to share this information with Starling initially. But whilst this explanation could account for why Mr O didn't share this back in 2021, it doesn't explain why these details weren't shared with Starling in 2023 or with our Service until after my provisional decision. I can see Starling explicitly requested bank statements in 2023 and at this point in time Mr O was offering to pay back the £500. So, I find this omission suspicious, and it means I don't find this evidence particularly persuasive.

I also can't ignore the fact that once Starling had alerted Mr O to the fact the money was likely fraudulent and had not been sent directly by B, Mr O refused to return it. Mr O's own testimony is that his unwillingness to share his bank details was because he didn't want Starling to recover the funds. Whilst I recognise he was in financial difficulties at the time, this does suggest Mr O was willing to retain funds he knew were likely fraudulent which makes it more plausible that Mr O knew the funds were not legitimate.

Mr O's account of the loan arrangement with B is also vague. The suggestion here is that he randomly met someone online, whose personal details he didn't know, and that person agreed to lend him £500 for an indefinite period of time, to be returned when he could afford it with no mention of interest. This is clearly a very unusual agreement. It is also unusual that this was agreed over the phone with nothing confirmed in writing. Whilst this doesn't mean it

isn't possible, the implausibility of the arrangement is of note when deciding whether it's likely.

I've thought about the fact Mr O's further explanation as to how he arranged this loan offers a reason as to why he was unable to provide his friend's details in 2021. But I also note that the evidence he's provided in support of this arrangement via a social media group remains limited. We have a screenshot to show the group exists, but no evidence of his initial post requesting financial support; again, this is evidence I would have expected to be available to Mr O.

Of course, we do now have a screenshot which evidences a chat with B about tuition fees and an offer to help generally before the payment was made. Whilst this could have added significant weight to Mr O's version of events, I would again question why it was not shared sooner. I'd note Mr O previously told Sterling he didn't have evidence of this nature as he'd arranged everything over the phone. I've considered Mr O's explanation for this delay – that he thought he'd sent this information, but it saved into his draft messages. But whilst I can see how this might have happened in 2021, this same information was also explicitly requested by Starling when Mr O complained about the Cifas marker in 2023. However, once again, it was not provided by Mr O. At this point Mr O understood the impact of the Cifas marker and his circumstances had shifted. So, I don't think his explanation for this omission can be plausibly applied to his 2023 discussions with Starling. I also find it unlikely that the same error would be made again. So, I think this inconsistency in his testimony makes his version of events less credible and leads me to place less weight on this evidence.

Taking everything into account, I am of the view that it was reasonable of Starling not to remove the Cifas marker in 2023 given the outstanding evidence that Mr O ought reasonably to have been able to provide. Ultimately, a lot of the additional evidence Mr O has since provided has been given to our Service at a much later point. And after carefully reviewing everything, I remain of the opinion that there are inconsistencies in Mr O's account that he's failed to provide an explanation for.

I appreciate that Mr O's argued he received a loan to pay for his tuition fees, and wasn't complicit in the receiving of fraudulent funds. But, from the evidence I've seen I can't safely conclude this. Overall, I do not believe the evidence indicates the negative marker ought to be removed.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 August 2024.

Jade Cunningham  
**Ombudsman**