

The complaint

Mr A is unhappy that Lloyds Bank PLC recovered funds from his account and loaded his name to a fraud prevention database.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mr A held an account with Lloyds. In late 2022, his account received a number of payments that were subsequently reported by the senders as being paid as a result of fraud.

Lloyds suspended Mr A's account and carried out a review. Having done so, it decided to return the funds reported as fraud to the sending banks, closed Mr A's account and loaded an adverse fraud marker to the Cifas database.

Following this decision, Mr A attended a branch of Lloyds and explained that the money was sent to him for the purchase of cryptocurrency. He provided evidence to support this, however, Lloyds rejected this as insufficient proof of entitlement to the funds and maintained its decision to close the account and return the funds.

Mr A was unhappy about this. He wanted Lloyds to return his money as he believed it rightly belonged to him. And he wanted the fraud marker removed as it was causing his other financial accounts to close and prevented him from opening others.

Lloyds looked into Mr A's complaint but didn't agree it had made an error. It retained the fraud marker and didn't reimburse his loss.

Mr A remained unhappy with Lloyds' decision, so he brought his complaint to our service for an independent review. An Investigator considered the evidence and testimony provided by both parties but didn't find Lloyds had made an error. In summary, they felt that the standards required by Cifas to load the marker had been met. And they also felt Mr A wasn't able to sufficiently prove his entitlement to the funds in dispute.

Mr A disagreed with the Investigator's view. He reiterated that he was also the victim of fraud and had lost these funds as a result of the legitimate sale of cryptocurrency to fraudsters.

As Mr A didn't agree with the Investigator's assessment, the matter was passed to me for a decision to be made. On 10 June 2024 I issued my provisional findings to both parties as follows:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Cifas recording

One of the relevant considerations here is 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 regarding this complaint are:

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 [Lloyds] could confidently report the conduct of the subject [Mr A] to the Police.

My interpretation of these standards is that a member cannot simply load a marker against an individual based on mere suspicion. It must be able to meet a higher bar; in that a customer was likely a witting participant in the alleged conduct. This has been reinforced by Cifas' Money Mule Guidance, which it released to its members in March 2020.

Lloyds has already confirmed that it removed the Cifas marker loaded against Mr A on 3 February 2024. It has confirmed that it done this due to evidence Mr A provided supporting his testimony that the funds were received as a result of the sale of cryptocurrency.

I would however like to point out that Mr A provided this to Lloyds at an early stage of its investigation. Yet it still loaded the marker and retained it for approximately one year.

I've looked at the evidence Mr A says he provided to Lloyds in February 2023. And this clearly shows that Mr A was selling cryptocurrency via peer-to-peer payments through a well-known cryptocurrency platform. There is no evidence to suggest Mr A did this in bad faith. And I find it entirely plausible that fraudsters have used Mr A unwittingly to launder funds through his account in the absence of any evidence to the contrary.

Lloyds has pointed out that multiple claims against Mr A from differing victims of fraud raises sufficient suspicion to implicate him in the alleged frauds that have been committed. But equally, I cannot rule out the possibility that Mr A has been targeted repeatedly by a criminal network attempting to launder funds through multiple cryptocurrency purchases, or, by making multiple false claims of fraud against Mr A.

What Mr A has been able to demonstrate through reliable evidence is that he received these funds for digital assets he parted with in exchange for the funds. And Lloyds has been unable to demonstrate Mr A received these funds likely knowing they were the proceeds of crime.

For the above reasons, I don't find that Lloyds had enough information at the time to load the marker fairly and reasonably, or retain it for the period that it did.

Fraud recovery

Lloyds has confirmed that three separate reports of fraud were received for payments into Mr A's account:

1. 7 December 2022 – 2 payments totalling £2,100
2. 8 December 2022 – 1 payment of £1,742.24
3. 8 December 2022 – 1 payment of £2,854

Lloyds suspended Mr A's account, but I can't see it provided sufficient opportunity to Mr A to provide testimony or supply evidence defending his position. Instead, it returned the money to the beneficiary account soon after the reports were made. I don't find this to have been a fair and reasonable response to the reports received. Lloyds ought to have used the time in which it suspended Mr A's account to provide him an opportunity to evidence his entitlement

to those funds.

I can see that on 3 February 2023, Mr A emailed Lloyds providing evidence to support his claim over the funds which were from legitimate peer-to-peer cryptocurrency trades. Lloyds rejected this evidence as insufficient to prove his entitlement, however it had already returned the funds at this point.

Mr A has provided our service with numerous screenshots of his cryptocurrency account statements, chat history and transactional data. Within this evidence bundle, it can clearly be seen that Mr A sent the equivalent payments listed above to sellers that had transferred the respective funds to his account: and the dates of the payments into Mr A's Lloyds account correlate with these cryptocurrency trades. He's also provided messages he exchanged with the traders and screenshots they sent within the in-app chat, evidencing they'd sent the funds from their bank account to his.

Furthermore, the two payments made on 7 December 2022 were made from an account name that corresponds to the trader's account name on the cryptocurrency application. I can also see that this particular third-party had made another payment to Mr A outside the ones included in the fraud reports. Yet this payment doesn't appear to have been reported as fraudulent. This supports Mr A's testimony that he had dealt with the trader previously and had no concerns over their legitimacy.

Mr A has also provided evidence that one of the traders that he sent cryptocurrency to had been left a number of negative reviews accusing them of being a fraudster and that they'd requested the money back from their bank falsely.

I've also noted from one of the fraud reports that the bank raising the claim appears to have had some doubts around its validity.

The above evidence persuades me that had Mr A been given sufficient opportunity, he would have provided enough supporting evidence to prove his entitlement to the funds in dispute. The evidence also supports the fact that he had genuinely parted with digital assets to the equivalent of the payments he received, and that he likely had done this in good faith. It is therefore fair and reasonable to conclude that it's more likely than not Mr A has also fallen victim to a fraud and should not have had this money removed from his account."

As resolution to the complaint, I told both parties that I was minded to direct Lloyds to do the following:

"Cifas recording

Lloyds has already confirmed it removed the marker it placed on the Cifas database against Mr A's name, so I don't need to ask it to now remove this. But the marker—for the time it was applied—did impact Mr A.

He's provided supporting documentation that applications for at least two bank accounts were declined following the loading of the Cifas marker. And this no doubt caused him distress and inconvenience in trying to manage his finances. While a declined application cannot wholly be attributed to the application of the Cifas marker, I find it likely that the marker was a contributing factor in this decision from our service's experience of dealing with Cifas related complaints.

For this reason, I intend to direct Lloyds to pay Mr A £100 for the distress and inconvenience caused by the application of the marker.

Fraud recovery

As I've highlighted above, I'm persuaded that had Mr A been given the opportunity, he would have provided sufficient information to prove he was legitimately entitled to the funds he received into his account. And as he'd parted with digital assets to the equivalent value of the funds he received, he was deprived of these funds after they were removed from his account. I therefore intend to direct Lloyds to reimburse Mr A the money he lost, plus interest.

I find that two weeks, from the date Lloyds received the fraud reports, would have been a fair and reasonable time to provide Mr A the chance to defend his position and complete an investigation. I therefore find it fair and reasonable for Lloyds to pay 8% simple interest per annum from two weeks following the first fraud report to the date of settlement."

Both parties were provided until 24 June 2024 to provide any further comment or evidence that they may want me to consider before reaching my final decision.

Mr A agreed with the findings set out in the provision decision. Lloyds provided no further comment or evidence.

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.

As no further comment or evidence has been provided by either party in this complaint, I don't intend to depart from the findings set out in my provisional decision above.

My final decision

For the reasons I've set out above, I uphold this complaint and direct Lloyds Bank PLC to:

1. Reimburse Mr A £6,696.24.
2. Pay 8% simple annual interest on this amount from two weeks after the first fraud report was received to the date of settlement.
3. Pay £100 in compensation.

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

Stephen Westlake
Ombudsman