

## **The complaint**

Mr S complains Starling Bank Limited recorded a marker against him at Cifas, a national fraud database. He doesn't think it's treated him fairly.

Whilst the complaint is brought with the assistance of a professional representative, I will mostly refer to Mr S in this decision as this is his complaint.

## **What happened**

A summary of what happened is below.

Mr S opened an account with Starling in February 2022. On 1 April 2022, it was credited with a number of payments from a third party through bank transfers. The payments totalled £6,800. The funds were immediately removed afterwards using Mr S's banking credentials. However, the incoming payments were later identified as fraudulent, because the bank from which they had come, notified Starling its customer had been the victim of a fraud and scam.

Starling restricted the account and requested some information on 4 April, via the banking app from Mr S to explain the purpose of the payments he'd received. It got a response back to say that the money had come from a second cousin for shopping, ahead of him going to university in September. And that there was a link with the payer.

Starling requested additional evidence to support this, and a screen shot was uploaded into the chat, naming the person that had sent the funds.

Starling didn't think this was enough and it went back to ask for screen shots of the full conversations leading up to the payments. However, no further response was received.

Following a review, it decided to close the account and sent Mr S notification of its decision. At the same time, it also loaded a misuse of facility marker at Cifas because it thought the activity on the account suggested Mr S had been complicit in fraud.

Mr S learned about the marker after he did a data subject access request (DSAR) to see what information was held about him. He complained to Starling to say he'd not done anything to cause this. He provided additional information for the bank to consider, where he said he had opened the account in February 2022 but hadn't made any withdrawals and deposits. Starling considered this but didn't think it had done anything wrong in the steps it had taken.

Dissatisfied, Mr S referred his complaint to us. In doing so, he told us what had happened:

- The account had only been opened as a back-up.
- He'd installed the banking app at the time.
- He's made some early transactions but thereafter didn't remember initiating any activity on the account.
- When another bank closed his account, he accessed the Starling app to see if the account was still working. The app was working but not the account.

- On discovering the fraud marker, he went back into the app and took screen shots which showed when the facility had been accessed, which didn't include anything in April 2022 to when he'd gone back into it in January 2023.
- He believed an unknown fraudster had hacked the account, using his credentials (phone number and email). Because this was information that was available to others.
- Following a DSAR he'd seen a lot of payments had been made to Klarna, but he didn't have a Klarna account. He'd investigated that account, and it was in the name of someone else and not him. This supported there was fraud going on but unbeknown to him.
- He had no knowledge of any of the activity that had taken place on and after the 1 April 2022.

One of Investigators investigated the case, but she didn't uphold it. She found Mr S's testimony contradictory. In particular, she noted that when Starling had contacted him at the time of the fraud, he'd said the payments were intended for him and were for shopping from a relative. But he was now saying he had no knowledge of them. She shared the messages and screen shot that Starling had received and considered it highly unlikely that someone else would have replied to the bank without him knowing. She concluded Starling had had enough evidence to record the marker and hadn't been wrong to close the account either.

Mr S didn't agree – he said the response Starling had got was from whoever had hacked his account, and it was down to the bank to connect the screen shot to his mobile number and him. He added that he had no connection with the person from whom the funds had come, and the bank should be put to further proof on all of this.

When an agreement couldn't be reached, the case was put forward for a decision in line with our process.

### **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.

I've looked at everything afresh, but my decision is that I am not upholding this complaint and for broadly the same reasons as the Investigator. I'll explain why below.

The marker that Starling has filed is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, it's not required to prove beyond reasonable doubt that Mr S is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says, there must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted and 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 Mr S's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr S 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 to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show complicity.

To meet the standard of proof required to register a fraud 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 to understand their level of knowledge and intention.

So, I need to decide whether I think Starling has enough evidence to show fraudulent funds entered Mr S's account and he was complicit. And I'm satisfied that it has. I'll explain why by addressing what I consider are the salient points.

I've seen evidence from Starling that it received a report saying that funds which entered Mr S's account was because of a fraud. He doesn't dispute this either.

Mr S says he doesn't know the person that paid the funds into his account, nor did he have any knowledge of the payments, until he did a DSAR. He further contends that the message that Starling got back, was from someone that had hacked his account. I've considered carefully what he's said and provided on this, but I don't find it persuasive. Aside from there being no tangible proof that his account was hacked (the payments were withdrawn using Mr S's credentials and I'm not seen anything to show the Starling account was compromised), I'm not sure what an unknown fraudster would gain from responding to and providing information about payments that had in large exited the account, and particularly when they would also know that Starling was investigating. Therefore, I don't believe this is what happened.

Also, Starling's contact notes show that it sent Mr S a SMS to his registered mobile number on 4 April 2022, telling him that he had a message from it and to open the app. I think it's highly unlikely he wouldn't have seen the message and not accessed the app for months - there was only one device registered to the account – Mr S's.

Considering everything but particularly the response Starling received and the account activity, I think the circumstances were enough to show that it was Mr S or someone with his consent that responded to it about payments that were the subject of a fraud report. And I don't consider the bank needs to be put to further proof on the evidence as part of this complaint as I believe it's sufficient. My conclusions are that Starling hasn't treated Mr S unfairly in filing the marker or closing the account (for which there's provision in the agreement).

I realise Mr S will be disappointed, but this now ends what we can do to review his complaint.

### **My final decision**

My final decision is that I don't uphold his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 April 2025.

Sarita Taylor  
**Ombudsman**