

complaint

Mr H complains that his bank, Lloyds Bank PLC, filed an adverse report with Cifas and he wants it to be removed. This happened after he received £50,000 from someone he knows, from an account with another bank (bank A). Mr H was also unhappy that Lloyds closed his account.

background

Lloyds told Mr H, in a letter of 13 September 2016, that bank A had contacted it and said it was concerned about the payment. Because of this, Lloyds recovered £49,913.29 of the money from Mr H's account and, ultimately, returned it to bank A.

Mr H was asked to show why he was entitled to the money. So Mr H provided some letters from the sender of the money. These say the money was sent to Mr H willingly for him to invest on the sender's behalf. Mr H has also sought to explain the genuineness of the transaction to both Lloyds and bank A.

Our adjudicator explained that this Service's powers to investigate complaints of this type are limited given we've neither the powers nor the formal procedures of the courts; and we can't question all relevant parties under oath. He explained that the roles of two parties which he didn't have power to investigate – bank A and the sender of the funds – are highly material.

He reminded Mr H he could only consider bank A's actions in a complaint made by its customer; so he was merely looking at Lloyds' actions and their treatment of Mr H. And he noted there was still a concern regarding the money - and why it'd been transferred to Mr H.

Indeed, Lloyds hadn't simply accepted the word of bank A in the matter anyway. It had made enquiries about what it had been told and the adjudicator considered it had conducted as much investigation as it was able to in the circumstances. The adjudicator also spoke with bank A about the matter, despite our limited scope in that regard. And he noted that bank A hadn't sent a retraction to Lloyds of the concerns it had expressed previously.

The adjudicator concluded that Lloyds hadn't acted inappropriately and was within its rights to do what it had done, on the evidence available. He explained that the burden of proof for recording information with Cifas is lower than in a criminal or even civil court. And he considered that Lloyds had met the standard of proof required for a record to be made – that is that there's sufficient evidence to justify a police report. But there's no requirement for that report to have been made or a criminal conviction achieved for a Cifas report to be made.

The adjudicator acknowledged that such reports can cause considerable inconvenience and that it indeed had for Mr H. It was also noted that Mr H had been given little information about the meaning of the Cifas record or why it'd been added. But he said that a Cifas report is intended as a warning marker only - not to be interpreted as a 'black-listing' or a record of confirmed wrong-doing.

To repeat, the standard of proof is that there's sufficient evidence to report the matter to the police, which occurred. So the adjudicator therefore didn't recommend the information should be removed from Cifas.

As regards the closure of Mr H's account, the adjudicator said that Lloyds, as a commercial organisation, is free to choose who it wants to do business with, just as a customer of the bank is able to close their account. And neither party has to give a reason to the other. The adjudicator said that, against that background, Lloyds has chosen not to do business with Mr H and he wouldn't recommend that this decision should be interfered with.

Mr H has asked that his complaint be reviewed by an ombudsman. He maintains that the transaction was genuinely made and with full understanding of both him and the sender as to the reason for the transfer of funds. He accepts that Lloyds had to respond to the information received from bank A – and he understands how his account might need to be frozen and the funds returned. He's accepted the closure of the account.

He also accepts how a Cifas report can come to be made based on an understanding of events. But he's unhappy that the Cifas report can be allowed to remain when it's disputed and the bank's 'understanding' is shown to be incorrect. And he also disputes the basis on which Cifas markers are interpreted by other banks. Finally, he says that even if the bank had concerns, the police investigated the matter and found no wrong doing – and those findings should override any concerns of the bank.

my findings

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 come to the same findings and conclusions as the adjudicator. I acknowledge that there's an acceptance, on Mr H's part, about the majority of the bank's actions in relation to the circumstances behind this complaint. Mr H has accepted that the money's been returned to its sender and he's not asking for his account to be reopened.

The matter for me to still determine though is whether the bank ought to be entitled to keep its adverse report about Mr H registered with Cifas now Mr H has had his say about the circumstances behind the remittance of the money to him and given the evidence Mr H has been made aware of, supporting the report.

And I have to decide, in all the circumstances of the case, what is fair and reasonable here. In order to do that, I consider I need to ask whether I can fairly and reasonably require the bank to remove the report – and to be able to require it to do that, it seems to me that I need to be able to say that the bank's interpretation of all the information available to it led to concerns it wasn't entitled to have.

Against that background, I must have regard for the adjudicator's correct description of the basis on which the bank can file a report with Cifas and also the basis on which other institutions should respond to identifying Cifas reports and their contents. Also, as the adjudicator correctly states, I can't oblige all interested parties here to give sworn evidence. And, clearly, that of the money's sender is highly material.

Given all of that, and the information that Lloyds has become aware of – including that provided by Mr H which I acknowledge contradicts Lloyds' understanding of things from other sources – I don't think I can fairly and reasonably say that Lloyds didn't have sufficient justification to make a report to the police (and therefore record a Cifas entry); and I also don't consider that information has subsequently come to light such that I can retrospectively say the bank has acted incorrectly.

To be clear, in making this decision, I'm not seeking to suggest I understand exactly what the position is between Mr H and the person who sent the funds to him. I'm not suggesting that I can be certain at all that Mr H has been involved in any wrong doing. But the decision for me to make was about whether I could say that the bank wasn't entitled to act as it did, with its Cifas report, based on the information available to it; or that I can say that its current position is unsustainable. And I don't consider I can.

In light of everything, I don't require the bank to alter or remove the report it made to Cifas.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 August 2017.

Ray Neighbour
ombudsman