

complaint

Mr R complains that Lloyds Bank PLC closed his account without any notice and has loaded a fraud (CIFAS) marker against him which is preventing him opening an account elsewhere.

background

Mr R said that he is in financial difficulties, and as he doesn't have a bank account he can't receive benefits he is due. He said the CIFAS marker is unfair and is preventing him from opening a new bank account and he wants Lloyds to remove the marker.

Lloyds said it closed Mr R's basic bank account following a risk assessment, and wrote giving him 60 days' notice. Lloyds said Mr R had raised five dispute claims and two fraud claims in the last 12 months and this demonstrated '*behaviour of the customer amounts to fraud.*' Lloyds said its decision to close Mr R's account was taken in accordance with the terms and conditions of the account. Lloyds said it's under a duty to report misuse of an account and had sufficient grounds to report the information it held.

Lloyds' best practice guide says about fraud markers:

Before an organisation is able to place a warning about you on our database they must be in a position to make a formal complaint to the police or other relevant law enforcement agency. They must have carried out checks of sufficient depth to satisfy this standard of proof. Typically organisations will have found material falsehoods in the personal information supplied on an application, proposal or claim, or in the case of an account, policy or service, and will be able to demonstrate that the behaviour of the customer amounts to fraud. A criminal offence must be identifiable.

The investigator acknowledged that Mr R's had raised many disputes and chargebacks and the retailer on one had shown the items were delivered to the correct address. But he said Mr R's disputed transactions didn't mean he'd lied. He said Lloyds would need to evidence this in order to carry the high bar of the CIFAS marker, but it hadn't responded. The investigator recommended the complaint be upheld as it wasn't fair for Lloyds to apply a CIFAS marker before all checks were completed given the implications for Mr R. He said Lloyds should pay Mr R £500 for the inconvenience he's suffered.

Lloyds disagreed with the investigator saying Mr R had changed his version of the events surrounding a disputed transaction and used the same IP address in logging into his computer as for a transaction he'd denied making. It also said the majority of his claims had been shown to be false. It said Mr R had opened multiple accounts with Lloyds, with at least one left with a large debit balance and it said he is still trying to open further accounts by changing his name and address to try and bypass fraud controls.

The investigator said IP addresses can be shared through multiple devices and this doesn't necessarily suggest this was Mr R. He said Lloyds hadn't demonstrated that Mr R had lied about his transactions.

Lloyds said Mr R had falsely claimed that he had no dealings with an online supplier, but the supplier had showed that the goods were delivered to his address. Lloyds said Mr R had variously claimed that he did, and did not have an account with the supplier and later that his account had been hacked. Lloyds requested an ombudsman review the complaint.

my findings

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 carefully at Lloyds' handling of Mr R's bank account and the fraud marker it has put against him to see if it has treated him in accordance with the correct procedures, and treated him fairly.

Lloyds gave Mr R notice of the closure of his account. Banks may decide they no longer wish to bank with a customer, but basic accounts carry different and more rigorous conditions concerning closure than a normal current account. Lloyds' conditions say a basic account will only be cancelled if the account was obtained by the provision of false information, or the account was used illegally. I haven't seen evidence of these or the other actions alleged by Lloyds and Lloyds hasn't responded to my request for its reasons. I think that Lloyds should re-open Mr R's basic bank account.

Because the implications of having an adverse fraud marker are so serious, when a business puts a fraud marker against a customer it must be able to demonstrate that this is in response to a serious criminal action. The standard of proof required before a marker is placed is set out within Lloyds' guidance (above). This states that the evidence must put Lloyds in a position to make a formal complaint to the police or other relevant law enforcement agency.

Following several requests from our service, Lloyds has said that it has enough evidence to make a formal complaint to the police or other law enforcement agency about Mr R's conduct, but isn't actually required to do so and hasn't made a referral.

The investigator said he hadn't seen enough evidence to meet the required standard of proof for a fraud marker. I have looked at the evidence Lloyds has provided and agree with the investigator that we haven't seen enough evidence to satisfy the standard of proof required to justify the placing of the CIFAS marker against Mr R.

Lloyds said that the IP address for the disputed transaction and Mr R's log in are the same. This can be an indication of a link between a consumer and a transaction, but isn't conclusive as IP addresses can be shared by different computers.

Lloyds said Mr R made a false claim as the online provider had shown that the goods in the disputed transaction had been delivered to his address. Lloyds also said Mr R had made conflicting statements about an online provider's account. I can see that the transaction was low value, and that it would not normally be associated with fraud, and Mr R thought he'd closed his account with the provider after a previous problem. Lloyds said he was confused about which claim was disputed and I think this explains the conflicting responses that he gave Lloyds.

I don't agree with Lloyds that a number of declined claims in a short period of time demonstrates behaviour amounting to fraud. Further proof of 'material falsehoods' amounting to criminal conduct is required to justify a fraud marker in my view and Lloyds hasn't provided this and so it should withdraw the fraud marker from Mr R's record. I can see from Mr R's description that the fraud marker has made his life very difficult and he hasn't been able to manage his finances. I think Lloyds should pay Mr R £500 compensation for the impact the marker has had upon him.

my final decision

For the reasons I have given it is my final decision that Mr R's complaint about the fraud marker is upheld. I require Lloyds Bank PLC to remove the CIFAS marker it placed against Mr R, and further I require Lloyds Bank PLC to pay Mr R £500 compensation for the impact that its poor service has had upon him. I also require Lloyds Bank PLC to re-open Mr R's basic bank account, or offer him a new basic bank account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 May 2019.

Andrew Fraser
ombudsman