

complaint

Ms A complains that Bank of Scotland plc closed her current account and registered a fraud prevention marker against her without due cause.

background

Ms A is the director of B, a small business. In August Ms A got in touch with Bank of Scotland to notify them of a large payment due into the account. She also changed the name and purpose of the business. The payment was never received.

In December 2018 £50,000 was sent to B's account. The sending bank got in touch with Bank of Scotland to say that these were fraudulent funds and weren't intended for B. Ms A said she wasn't expecting these funds and did not know why they had been sent to her. But Bank of Scotland decided to review B's account and subsequently took the decision to close Ms A's personal account and register a Credit Industry Fraud Avoidance System (Cifas) marker against B.

Ms A complained to Bank of Scotland. She reiterated that she was not sure why or how these funds had been sent to her business account and suggested someone could have got her bank details from her phone that had been stolen in November. Bank of Scotland felt they had reasonable grounds to believe that she had been involved in or attempted a fraud or financial crime as the director of B, so they felt they had done nothing wrong in escalating their concerns to Cifas about Ms A as an individual. They also said they had closed her personal account with 60 days notice in line with their terms and conditions, so didn't feel they had done anything wrong.

Ms A was not happy so she came to our service. Our investigator agreed that Bank of Scotland were entitled to close her account with 60 days notice as this was in line with the account terms and conditions. Ms A has agreed with this point. They also recommended that the Cifas marker should be removed as they didn't feel Bank of Scotland had reasonable grounds to conclude that Ms A had been involved in a fraud or financial crime. He recommended that they also pay Ms A £150 for the distress and inconvenience they caused her. Bank of Scotland didn't agree that the Cifas should be removed. They felt that the account activity in August suggested that Ms A had intended to use her business account for fraudulent purposes and that the evidence suggested that she had done so in December. Because they disagreed with our investigator's recommendation, it has come to me to make a decision.

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, my review of the evidence has led me to the same overall conclusions as the investigator previously set out and for much the same reasons.

The marker that Bank of Scotland asked Cifas to register against Ms A is for misuse of facility. This misuse this refers to is using the account to receive fraudulent funds. In order to reach the evidential burden required to record this, Bank of Scotland aren't required to prove beyond reasonable doubt that an offence or attempted offence were committed. But to register a Cifas marker for misuse of facility Bank of Scotland need to be able to demonstrate that there are *reasonable grounds to believe* that a fraud or financial crime has

been attempted or committed. They must also be able to show that the evidence they've based this on is clear, relevant and rigorous such that it could confidently report the conduct of B to the police – though this doesn't mean that they actually have to report it to the police.

The finding for me to make is not about what I think was most likely to have been Ms A's role in the sequence of events that led to fraudulent funds being sent to her business account. Rather, my role is to determine whether I think that the Bank of Scotland have clear, relevant and rigorous evidence that gives them reasonable grounds to believe that Ms A was involved in a fraud or financial crime such that it would be able to escalate its concerns to Cifas.

I don't think Bank of Scotland have demonstrated that they were entitled to escalate their concerns to Cifas, and I will explain why. I am satisfied from Bank of Scotland's evidence that there was an attempt to move funds into B's account that she wasn't entitled to, and that they had grounds to be concerned and conduct a review of B's account. But for me to find that I think Bank of Scotland had reasonable grounds to believe Ms A had been involved in or attempted fraud and financial crime, I would need to be satisfied they had suitable evidence that she had knowledge or intention relating to these funds.

Bank of Scotland have argued that the account activity in August whereby Ms A changed the name and purpose of her business, and notified them of a large payment that was not received build a picture of someone who was intending to use the account for fraudulent purposes. Whilst this could be true, I think there are plenty of plausible explanations for this that don't involve fraud. As such I think this amounts to mere suspicion which is not sufficient in and of itself to register a Cifas marker. So I've gone on to consider the December payment.

I accept that a payment was initiated to transfer funds to B's account that B was not entitled to receive. Ms A has no explanation as to how this money was sent to her account, which may be because she genuinely has no knowledge of these funds or why they were sent to her account. As none of the funds reached her business account, there was no way these could have been seen by Ms A nor spent. And I've not seen anything from Bank of Scotland that shows she was aware of them or played a role in the initiation of the payment to her account. Whilst I accept that it is strange that these funds were sent to Ms A's business account, there are ways this could have happened without her knowledge. For example, her bank details may have been included or entered in error by the owner of the sending account, or by someone attempting to scam the owner of the sending account.

Bank of Scotland haven't been able to show much evidence from the sending bank to assist in our understanding of exactly what happened to initiate the sending of funds to B's account. We cannot know exactly what happened, but Ms A denied knowledge of these funds at the first opportunity. Without evidence to support Ms A being aware of these funds, it is difficult to see how Bank of Scotland had a reasonable belief that B was party to fraud or financial crime.

Taking everything into account, I don't think Bank of Scotland had enough evidence to meet the burden of proof required by Cifas to add the marker against B. I don't think it is fair and reasonable for the Cifas marker to remain, so I will be asking Bank of Scotland to remove the marker. With regards to the account closure, Ms A has accepted that the account was closed in line with the terms and conditions and I agree with the investigator's opinion that nothing more needs to be done by Bank of Scotland in relation to this.

my final decision

For the reasons outlined above I require Bank of Scotland to remove the Cifas marker that has been registered against Ms A and pay her £150 for the distress and inconvenience it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before XXX 2020.

Katherine Jones
ombudsman