

complaint

Mr U complains that The Royal Bank of Scotland plc (RBS) has recorded adverse information about him to CIFAS, one of the UK's fraud alert services.

Mr U has been helped with his complaint by a representative. But for ease of reading, I'll only refer to Mr U himself.

background

In 2016 Mr U's account was used to receive almost £6,000 in two amounts and over the following three days it was all withdrawn in cash. The day after this, Mr U reported that he hadn't carried out the transactions. RBS refunded the money whilst it investigated. It told Mr U that it would remove the refund if further information about his claim was available. Mr U immediately transferred £4,000 to another account. Two weeks later RBS gave Mr U notice that it would be taking back the amount it had refunded to his account.

Mr U is now concerned that a CIFAS marker has been placed against his name. This is preventing him from getting the job he'd like and he hasn't been able to open another account.

Our adjudicator didn't think this complaint should be upheld. He believed that Mr U had either made the withdrawals himself or allowed a third party to use his account to receive and remove money from it. As Mr U couldn't prove he was entitled to the funds and he'd benefitted from them, the adjudicator thought the CIFAS marker had been applied fairly.

Mr U didn't accept this. In summary, he doesn't think that the bank had proved that he'd committed a criminal offence.

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'm satisfied the transfers into Mr U's account were fraudulent and weren't authorised by the respective account holders. Their own banks will have investigated those payments before reaching that conclusion.

Mr U says that he knew nothing about the withdrawals that followed the receipt of the money. He complained to us about this in 2017. He said that he didn't report his previous card as lost so he was unsure how a new card, which was used to make the withdrawals, was ordered. He thought the replacement card was intercepted from the post and someone else carried out the transactions. He said this was possible because he lived in the block of flats. We thought it was unlikely that he didn't know anything about what had happened and thought RBS had acted fairly at the time.

Mr U has now asked RBS to remove the CIFAS marker it recorded against him in 2016. In order to decide whether RBS needs to remove the marker, I need to consider the circumstances in which those transactions took place. I also need to consider whether the report to CIFAS was made fairly. On this point, RBS needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted. The evidence it has would have to be enough to support this being reported to the authorities.

money received

Mr U has now said that he expected to receive some money into his account for some goods he had sold. But he didn't tell RBS this when he disputed the cash withdrawals. He said at the time, that he hadn't used his card because he didn't have any money coming in. He hasn't been able to produce any evidence to show that he was expecting to receive almost £6,000 and, given the amount, I would have expected him to be able to do so. He said that when he sold such goods he did it by 'word of mouth' so there wouldn't have evidence. I have checked his bank statements for the preceding 18 months and there are no other large amounts paid into his account to show that he did this from time to time.

cash withdrawals

RBS records show that Mr U's card was reported as lost or stolen on 30 June 2016. The following day it sent a new card to Mr U's address. A week later it sent out a PIN, again to Mr U's address. Mr U has suggested that these could have been intercepted in the post. Whilst I accept this is possible, previous cards and PIN advices have been sent to Mr U's address and he has received them. And I don't consider it likely that a third party would order the card and PIN and risk being able to intercept them in the post a week apart.

£1,500 was removed from Mr U's account the day after the credit was received, without a balance enquiry before the first withdrawal and using the correct PIN. I think that whoever withdrew the money already knew there was enough money in the account. The maximum ATM amount was withdrawn each day within a short period of time. There were then no further attempts to take more cash on that day so whoever made the withdrawals knew the account cash withdrawal limit as well. If it was an unknown third party then I would have expected to see some failed attempts to withdraw more cash.

online banking activity

The two fraudulent payments arrived into the account within a day of each other. RBS has shown that in that time period Mr U logged on to his online banking a number of times each day during the time that the cash withdrawals were taking place. Prior to receiving the incoming payments Mr U's account was overdrawn.

Mr U logged on to his account just under three hours after the first three withdrawals were made all within a couple of minutes. He continued to log into his account throughout the time from when the money was received and over the next three days when the cash withdrawals took place. I consider that it is likely that, at a minimum, Mr U would have seen that his overdraft had reduced substantially when he logged on after the first cash withdrawals and so checked the transactions for his account during this time. And Mr U logged on to his account at least five times the day before he reported the withdrawals from the account.

During all of his online activity, I think, at the very least, he would have seen his account balance changing. Mr U said that he didn't make the withdrawals himself, so I think he would have been extremely concerned about what was happening on his account. I would have expected him to immediately report withdrawals he didn't recognise, particularly given the amounts and frequency, as soon as he became aware of them. But he didn't do so. Based on this, I think Mr U had at least some awareness of what was going on.

CIFAS

RBS says that it applied the CIFAS marker because Mr U received fraudulent funds into his account. So I've looked at whether RBS was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that RBS needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr U's account of events and the evidence RBS has provided, I'm satisfied that it had sufficient evidence to report matters to the police to investigate and so it was justified in recording the CIFAS marker. In coming to this view, I've taken into account the following reasons:

- The evidence provided by RBS supports that Mr U received fraudulent funds into his account. He didn't report this to RBS at the time.
- He made or allowed someone else to withdraw the funds and so was in control of who had the benefit of this money.
- RBS had grounds to believe that Mr U had used fraudulently obtained funds based on the evidence it had.

I appreciate that this will be a great disappointment to Mr U as the marker is causing him difficulty now and in the future. But given what I've said above, I don't think RBS has treated him unfairly in respect of the disputed transactions and recording the CIFAS marker. So I won't be asking it to do anymore.

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 U to accept or reject my decision before 28 February 2020.

Karen Wharton
ombudsman