

## **Complaint**

Miss D is unhappy that Bank of Scotland plc, trading as Halifax, closed her account and loaded a Credit Industry Fraud Awareness (CIFAS) marker. She'd like the marker removed.

## **Background**

In July 2018 three cheques were paid into Miss D's Halifax account. These cheques were returned unpaid and Halifax received contact from another bank, I'll call S, who informed them that the cheques were fraudulent.

Halifax reviewed Miss D's account and decided to close it. They also added a Misuse of Facility CIFAS marker on Miss D's record.

Miss D had several telephone calls with Halifax and also visited a few branches to discuss their decision. Miss D firstly told Halifax that she was moving money earned from selling goods in Sierra Leone and later explained she was paying back a friend who'd lent her money. Miss D explained that she wasn't aware that cheques were going to be credited into her account – or that they were fraudulent.

Halifax didn't uphold Miss D's complaint. And said they were satisfied they had sufficient evidence to meet the bar for CIFAS.

Miss D wasn't happy with Halifax's response so complained to our service.

One of our investigator's looked into Miss D's complaint. On speaking with Miss D she provided a further explanation for why her account details had been compromised. Miss D explained that she'd sold land previously owned by her late mother, and wanted this transferred to London. Our investigator asked why she'd provided different explanations before to Halifax and Miss D said this is because she was frustrated, and she wasn't selling goods or paying back a friend.

Our investigator thought that despite Miss D's contradictory testimony Halifax didn't have enough evidence to meet the bar for CIFAS. But she felt the account had been closed fairly. And she recommended that the marker is removed, Miss D is compensated for the additional costs she's incurred in using a fee paying account and she should be paid £250 in distress and inconvenience.

Halifax didn't agree with our investigator's conclusion. In summary they said:

- Miss D's given a number of different explanations for why her account details were compromised, and she was trying to transfer funds through her Halifax account.
- Miss D hasn't provided any evidence to support her explanations.
- They believe they've reached the bar for a CIFAS marker to be loaded on Miss D's record.

As Halifax didn't agree the case was passed to me for a decision.

On reviewing Miss D's case I came to a slightly different conclusion to our investigator. And I issued my Provisional Decision to both Halifax and Miss D in October 2020. Halifax accepted my Provisional Decision without further comments but Miss D didn't. In summary she said:

- She decided to tell Halifax different stories so that someone would ask her to find evidence.
- She worked hard for the money that was received into her Halifax account.
- She was expecting cash not cheques, and didn't know anything about the cheques.
- She's provided bank statements from her account with Halifax and another bank, I'll call N, which show she was purchasing goods in UK supermarkets to sell in Sierra Leone.

Because Miss D didn't accept my Provisional Decision I've re-considered my conclusions.

### **My findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And in doing so I've not changed my original conclusions.

In my provisional decision I said:

*The marker that Halifax have filed with CIFAS 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, they're not required to prove beyond reasonable doubt that Miss D is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS 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 such that the member could confidently report the conduct of the subject to the police."*

*What this means in practice is that a bank must first be able to show that either there was an attempt to put fraudulent funds into Miss D's account or fraudulent funds have entered Miss D's account, and were either moved on or retained. Secondly, the bank will need to have strong evidence to show that Miss D 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 her account in order to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.*

*I've thought about whether Halifax have provided evidence that fraudulent funds entered Miss D's account and she knew they were, or might be, illegitimate payments. And I think they have, I'll explain why below:*

- *I'm satisfied that the evidence Halifax provided regarding the three cheques credited into Miss D's account shows they were fraudulent.*
- *I'm concerned and surprised about Miss D's contradictory accounts of what happened. I accept that the cheques were deposited over two years ago now and*

*Miss D's explanation may have changed slightly over time. But I think there are significant differences in Miss D's accounts of what happened ranging from owing money to a friend, being self-employed and selling goods and her most recent explanation which centres on selling land owned by her late mother. And I've not seen any evidence to support any of these accounts.*

- *Even if I did accept Miss D's final explanation of what happened as accurate, I struggle to understand – after receiving funds from Miss D – why a fraudster would deposit fraudulent cheques into her account.*

#### *Account closure*

*I've also thought about whether Halifax closed Miss D's account fairly, and I'm satisfied they did. On the 21 August 2018 Halifax sent Miss D a letter saying that her account would be closed within 14 days. I've looked at the terms and conditions of Miss D's account and I'm satisfied that they acted within these terms when closing Miss D's account immediately.*

*I realise this will be disappointing to Miss D but for the reasons I've outlined above I think Halifax have acted fairly in loading a CIFAS marker on her record and closing her account. In doing so I'm currently minded to not ask the bank to do anything further.*

I've considered Miss D's response to my Provisional Decision.

Miss D has responded to my point about the different versions she's provided by stating that she gave different accounts to Halifax out of frustration. And wanted them to ask her for evidence to demonstrate her innocence. I'm afraid I don't find this explanation credible. I struggle to understand why Miss D provided two explanations she now informs me weren't accurate when she was provided with the opportunity to explain the origin of the funds to Halifax and our service.

Miss D's provided me with bank statements, from two of her bank accounts, to support her explanation of the origin of the funds. From looking at the statements I can see transactions which took place at UK supermarkets – but what this doesn't show me is exactly what Miss D was purchasing and how she transported or sold these products in Sierra Leone. I've also not seen anything to show Miss D's discussions with money transfer agents in Sierra Leone to indicate her attempt to transfer genuine funds.

Miss D's explained that she wasn't aware cheques would be deposited into her account. I accept, that it's possible Miss D wasn't aware that the money was going to be deposited into her account in the form of cheques. But, as I explained in my Provisional Decision, I can't find a plausible explanation for why a fraudster would deposit the cheques into Miss D's account without her knowledge.

In summary for the reasons I've explained above I think Miss D was *complicit* in receiving the fraudulent payments, it follows Halifax have met the requirements to load a CIFAS marker and I won't be asking the bank to do anything further.

#### **My final decision**

My final decision is I don't uphold Miss D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 2 January 2021.

Jeff Burch  
**ombudsman**