

complaint

Mr A complains that Bank of Scotland plc registered an adverse mark with CIFAS in 2012 which he says it shouldn't have done. Mr A wants it removed. He says it prevents him from having normal banking relationships and he wants compensation from Bank of Scotland. He complains now as he's unable to open new accounts with Bank of Scotland.

background

Mr A deposited a cheque in his Bank of Scotland account for £2980 on 23 July 2012. He says that he'd sold a car. The cheque issuer's bank then informed Bank of Scotland that the cheque was counterfeit. Bank of Scotland then became aware that a further cheque was attempted to be deposited in an account with another bank for £2860 on 15 August 2012. This was also confirmed as counterfeit.

Bank of Scotland says it asked Mr A to provide proof of entitlement to the funds that he was attempting to pay into his account. It considered that Mr A provided insufficient evidence that he was a genuine victim of fraud. It says that Mr A attended a branch with the person who'd given him the cheque; and he'd stopped that cheque and paid in cash. But this wasn't consistent with what the cheque issuer's bank had said.

Bank of Scotland also says it asked Mr A for the car registration number but neither Mr A nor the person accompanying him could answer that question. Mr A now says that he had vehicle and insurance documents on him but the bank has no record of these being produced. The bank took account of Mr A's limited ability to understand English but felt it couldn't remove the CIFAS marker.

Our adjudicator noted that when Mr A visited the branch, to confirm that the cheque was genuine, he says that he was with the alleged fraudster and that he wasn't asked for information by Bank of Scotland at the time. But he was concerned that Mr A wasn't able to present sufficient evidence to support his version of events. He'd offered no proof of sale of the vehicle. And this cheque, as well as another, was reported as counterfeit.

The adjudicator was also concerned that Halifax's records from the time of the visit to the bank indicated that both Mr A and the other party were asked for proof, that a car had actually been sold, during the visit on 6 August 2012, yet not even basic information about the car - such as the registration details - couldn't be provided.

In conclusion, the adjudicator didn't consider he could recommend that Bank of Scotland needed to take action about the CIFAS marker it had recorded.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr A has been assisted by a friend in explaining why he disagrees with the adjudicator. He says that:

- the person who visited the branch with him was the fraudster and the issuer of the cheque – he admitted to that and said he would pay cash to Mr A;

- in branch, the bank's staff dealt only with the fraudster, that he showed his passport and bank card and he said the cheques he issued were genuine;
- he didn't speak to the bank's staff or understand much of the conversation between them and the fraudster; and
- he could have evidenced, at the time, details of the car being sold. But he wasn't asked for the information or documentation.

First, I must acknowledge that there is significant difference in the evidence of the parties as to what happened when Mr A attended the branch. And that visit is important to how I determine this complaint.

Clearly, I can't now know for certain what happened. And, ultimately, where evidence is inconclusive or contradictory, I have to reach a decision on the balance of probabilities; that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

The visit to the branch took place in 2012 and Mr A's evidence takes the form of his recollections of what happened around four years ago. The bank's evidence, however, is a record of the conversation that was made at the time. I have to start from a position of finding the bank's evidence to be more likely to accurate than that of Mr A.

Further to that, Mr A paid a counterfeit cheque into his account (and, indeed, another one into another account). He attended branch and was given the chance to demonstrate that he'd been a genuine victim of fraud. But he wasn't able to and while he says he wasn't able to understand what the branch staff were saying and he relied on his representative to act appropriately on his behalf, the fact that Mr A says that 'the representative' was the fraudster and he now says wasn't acting in his interests can't be said to be the fault of the bank.

Considerable time has now passed since the incident that caused the CIFAS marker to be added and I'm afraid that I don't consider that I can fairly and reasonably say that the bank acted wrongly in adding that marker.

In short, Bank of Scotland was advised that a cheque paid into Mr A's account was fraudulent; it presented Mr A with an opportunity to explain how this came to happen; and, at no fault of the bank, Mr A wasn't able to evidence entitlement to the funds being paid by the cheque. And I now, after four years, can't be sufficiently persuaded that Mr A was the innocent recipient of the counterfeit cheque such that I can ask the bank to remove the CIFAS marker.

In light of all I've said, I don't require the bank to remove the CIFAS marker.

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 A to accept or reject my decision before 18 August 2016.

Ray Neighbour
ombudsman