

complaint

Mr W has complained Bank of Scotland plc, trading as Halifax, has placed a fraud-related marker against his record.

background

In September 2017 Halifax got in touch with Mr W to tell him they were closing his accounts. Mr W tried to open personal accounts with Halifax in the early months of 2018. He discovered Halifax had lodged a CIFAS marker against him which was making it difficult for him to get banking services. As Halifax wouldn't remove the marker, Mr W brought his complaint to the ombudsman service.

Halifax confirmed Mr W had received funds into his account when they'd had to return these when they were claimed as fraudulent. After reviewing all the evidence, including Mr W's statements, our adjudicator saw that a number of different claims had been made to Halifax. Money had been returned. Mr W explained these were customers of his business. In some cases they'd received the services and he'd been told by a Halifax branch that there was nothing behind these claims.

Our adjudicator felt overall Halifax had done nothing wrong in adding a CIFAS marker to Mr W's name. Mr W didn't agree with this outcome. What had happened had had a real impact on his business. He's asked an ombudsman to consider his 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. Having done so, I've reached the same conclusion as our adjudicator and for roughly the same reasons. I'll explain why.

Halifax withdrew Mr W's business account facilities in 2016 after they'd repaid two payments of £50 to Mr W's customers. Those customers had claimed they'd not got the service they'd bought from Mr W's business.

From August to October 2017, Halifax received a further four claims from customers of Mr W. They'd all paid him £50 too and didn't get what they thought they'd paid for. One customer withdrew their claim. And this may be the case where Mr W has explained he went to the branch to provide relevant evidence. Afterwards he believes the branch accepted he had no case to answer.

However I don't think this is the case. After two claims were made in August and September 2017 Halifax decided to close Mr W's accounts. Firstly they were concerned he was using his personal accounts for business purposes. And also they felt he was receiving money from customers fraudulently.

The information they got from customers was that once work was booked, nobody turned up from Mr W's business to complete the work. Then when customers tried to complain, they couldn't contact Mr W by phone or through social media.

At that stage and as there were further claims; Halifax decided to lodge a CIFAS marker. They believed he was knowingly receiving money without providing a service.

Mr W disputes this and provided us with copies of invoices for some of the disputed transactions. He's also shown us his business's terms and conditions of the booking and/or survey fee which confirms this amount is non-refundable.

We've also given Mr W time to provide us with evidence of his discussions and negotiations with these customers. Apart from the invoices and his belief these people merely changed their mind about the work they'd engaged to have completed; Mr W had no further evidence.

I've also looked at the tests a financial institution needs to meet when it decides to lodge a CIFAS marker. Halifax must show there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted. A CIFAS marker was added to Mr W's record in December 2017.

More generally a CIFAS marker applies where someone has received funds which weren't authorised by the original sender. This isn't the case here where the parties had a contract or arrangement with Mr W for services. The dispute is about those services. So the question I've considered is whether Mr W was knowingly taking payment for services he wasn't intending to provide. Overall I think this is the case.

In January and February 2018, Halifax received further claims for payments of £100 that Mr W's account had received.

I can understand why Mr W feels he's been the victim of false allegations. He's also right to say his accounts received other payments of £50 and £100 and no claims were made to his bank for repayment. But I have to balance this with the fact Mr W has been unable to demonstrate he tried to resolve issues with customers. Nor has he given us any evidence of the service he provides to other customers – including photos of work undertaken or customer testimonies.

Overall I don't think there's enough evidence to show Halifax has done anything wrong. I know the CIFAS marker has caused Mr W great problems but I don't believe I can ask Halifax to remove it.

my final decision

For the reasons I've given, my final decision is not to uphold Mr W's complaint against Bank of Scotland plc, trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 January 2020.

Sandra Quinn
ombudsman