

complaint

Mr C complains that Tesco Personal Finance plc (trading as Tesco Bank) wrongly recorded a fraud marker at CIFAS, the national fraud database.

background

Mr C received a credit of £4,000 to his account on 1 August 2017. Tesco Bank then had notification from the sending bank that the funds had been reported as fraudulently obtained. Mr C told it that he had received the money from a client to purchase a car at auction. He says that the client changed his mind about the purchase and that he paid the money back in cash.

Tesco Bank didn't accept what Mr C said because the funds were transferred from his account to other accounts at different financial businesses some of which were in his name and then withdrawn in cash. It wasn't returned to the original account. It told Mr C that his account would be closed but in error didn't do so until 4 June 2018. It paid him £50 for this but said it wouldn't be removing the CIFAS marker. It suggested this service contact the other banks involved for further clarification.

Our investigator recommended that the complaint be upheld. She said that the bar for reporting fraud to CIFAS was a high one. There needed to be more than suspicion and clear and rigorous evidence. She didn't think Tesco Bank could fairly rely on what it had been told by other financial businesses but needed to show its own investigation to support what it said. Mr C hadn't provided evidence to support his account of how he had paid the money to other accounts to withdraw in cash for the auction. But the onus here was on Tesco Bank to show it met the criteria. She said that Tesco Bank should remove the marker and pay Mr C a further £150 for the distress and inconvenience caused.

Tesco Bank didn't agree. It said it had met the following key principles established by CIFAS for reporting a marker which it said are as follows:

- "1. That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted;*
- 2. That the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the Subject to the police;*
- 3. The conduct of the Subject must meet the criteria of one of the Case Types;*
- 4. In order to file the member must have rejected, withdrawn or terminated a Product on the basis of Fraud unless the member has an obligation to provide the Product or the Subject has already received the full benefit of the Product."*

It said that it didn't have to suffer a loss or actually to report the matter to police. The fact that fraudulent funds had passed through Mr C's account and *"our customer was aware of the transaction was enough for us to record this with CIFAS."* It went on to say that Mr C hadn't provided any evidence to support his version of events and that it didn't make sense for the said client to pay money into Mr C's bank account if he needed cash for the auction. He went to great lengths to withdraw this.

my findings

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

Tesco Bank has correctly identified the relevant principles I need to think about here. In summary it 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 and that the evidence would support this being reported to the authorities.

I don't doubt that these funds were fraudulently obtained in the first place. Tesco Bank had a report from another financial business about this. And also the mere fact that Mr C received these funds into his account was a ground for some suspicion. His account of needing to pay for a car in cash, and of remitting the funds through different accounts before withdrawing can be seen as suspicious too given the origin of the money. However, as our investigator has pointed out suspicion isn't enough to make a report. It is up to Tesco Bank to provide the evidence that it had when it decided to add the marker.

Looking to point 2 using the numbering above I don't think Tesco Bank has established to the required standard that Mr C knew or must have known that the funds were fraudulent. It's noted in its records that he has been an officer of a company since 2014 which may be involved in the relevant business area. And the other evidence linking him to the fraud is third hand. Mr C doesn't have to prove his innocence here but the burden is on Tesco Bank to demonstrate it's met the bar for a report.

So while I share its concerns about the way in which fraudulent funds have been dispersed in this way it's not satisfied me that it's met the principles as far as Mr C's involvement is concerned. Absent that it didn't have a basis to report a marker. Technically speaking it also seemed not to have actually withdrawn the account as it was available to Mr C until June 2018. But that's not the reason for me saying it had no reasonable basis to apply the marker when it did.

Tesco Bank has paid £50 compensation already for not closing the account and I agree with the suggested resolution by the investigator of further compensation of £150 to reflect the impact of the marker on Mr C and which he'd confirmed he was happy with.

my final decision

My decision is that I uphold this complaint and require Tesco Personal Finance plc (trading as Tesco Bank) to:

- 1) Pay Mr C a further £150
- 2) Remove any record of the marker relating to this specific payment from the CIFAS database.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2020.

Michael Crewe
ombudsman