

## **complaint**

Ms A complains, in her capacity as director of business B, that Bank of Scotland plc closed the business account and registered a fraud prevention marker against B without due cause.

## **background**

Ms A is the director of B, a small business. In August 2018 she contacted Bank of Scotland to tell them she would be receiving a large payment of around \$80,000 which was not subsequently deposited. Later in the same month she got in touch with Bank of Scotland to change the name and nature of her business

In December 2018, someone tried to deposit £50,000 into B's account. Before the money reached B's account, it was reported as fraudulent funds. When Ms A spoke to Bank of Scotland she told them she was not expecting this payment and would have notified them if she was expecting a large payment, as she had done in August. Bank of Scotland decided to investigate B's account. Having done so they took the decision to close the account with 60 days notice and register a Credit Industry Fraud Avoidance System (Cifas) marker against B.

Ms A complained to Bank of Scotland on behalf of B. Ms A said that in November 2018 whilst abroad her bag and phone were stolen. She said that her bank account details were stored on the phone so this could explain how an unknown third party had her details to send the money.

Bank of Scotland defended their decision to both register the CIFAS and close the account. They felt the conduct in August added to the picture of someone using the account for fraudulent purposes as she'd changed the business type, and hadn't received the large payment she had called in about. They also felt that as the money was sent to her account in December they had reasonable grounds to believe B had been involved in, or had attempted to be involved in, a fraud or financial crime.

So Ms A brought B's complaint to this service. Our investigator reviewed what had happened and recommended that B's complaint be upheld in relation to the Cifas marker, but that Bank of Scotland had closed the account in line with the terms and conditions so he felt they had done nothing wrong in relation to that. Ms A agreed with these findings on behalf of B. Bank of Scotland disagreed as they felt they had enough evidence to demonstrate a reasonable belief that B was involved in the commission or attempt to commit a fraud or financial crime in relation to this receipt of funds. So, it has come to me to make a decision.

## **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, my review of the evidence has led me to the same overall conclusions as the investigator previously set out and for much the same reasons.

The marker that Bank of Scotland asked to be applied is for misuse of facility. The misuse relates to using the account to receive fraudulent funds. For Bank of Scotland to record this they don't need to be able to prove beyond reasonable doubt that B was guilty of fraud or another financial crime. But in order to register a Cifas marker, they are expected to be able to demonstrate that there are *reasonable grounds to believe* that a fraud or financial crime

has been committed or attempted. They must also be able to show that the evidence they've based this on is clear, relevant and rigorous such that it could confidently report the conduct of B to the police – though this doesn't mean that they must make such a report.

The relevant finding for me to make is not specifically what I conclude was most likely to have been Ms A's intentions and actions in relation to the fraudulent funds. My role is to assess whether I think it was fair and reasonable for Bank of Scotland to conclude they had a reasonable belief that B was involved in fraud of financial crime based on the evidence they had obtained, such that it could escalate its concerns to Cifas.

On balance I don't agree that Bank of Scotland were entitled to do so. I'll explain why. I am satisfied from Bank of Scotland's evidence that there was an attempt to move funds into B's account that weren't intended for her, and that they had grounds to be concerned and investigate B's account. But fraud and financial crime would also require knowledge of these funds.

Bank of Scotland raised concerns about the activity on B's account in August. Whilst I understand they are arguing that this could build a picture of someone trying to use an account for fraudulent activity, I think this amounts to mere suspicion which is not sufficient in and of itself to register a Cifas marker. So I've gone on to consider the December payment.

I accept that a payment was initiated to transfer funds to B's account that B was not entitled to receive. Ms A hasn't been able to explain why the funds were sent to B's account, but this may be because she genuinely has no knowledge of how this happened. None of the funds reached the account so they were never spent. And I've not seen anything from Bank of Scotland that shows she was aware of them. Whilst I accept that it is strange that these funds were sent to B's account, there are plausible explanations as to why this money could have been sent to B's account without Ms A's knowledge. For example, her bank details may have been included or entered in error by the owner of the sending account, or by someone attempting to scam the owner of the sending account.

Bank of Scotland haven't been able to show much evidence from the sending bank to assist in our understanding of exactly what happened to initiate the sending of funds to B's account. We cannot know exactly what happened, but Ms A denied knowledge of these funds at the first opportunity. Without evidence to support Ms A being aware of these funds, it is difficult to see how Bank of Scotland had a reasonable belief that B was party to fraud or financial crime.

Taking everything into account, I don't think Bank of Scotland had enough evidence to meet the burden of proof required by Cifas to add the marker against B. I don't think it is fair and reasonable for the Cifas marker to remain, so I will be asking Bank of Scotland to remove the marker. With regards to the account closure, Ms A has accepted that the account was closed in line with the terms and conditions and I agree with the investigator's opinion that nothing more needs to be done by Bank of Scotland in relation to this.

### **my final decision**

For the reasons outlined above I require Bank of Scotland to remove the Cifas marker that has been registered against B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A on behalf of B to accept or reject my decision before XXX 2020.

Katherine Jones  
**ombudsman**