

## **complaint**

Mr Z was the victim of a scam. He received three payments into his current account – which he says he thought were made to him genuinely, with a view to him transferring funds back out of the account. But the funds he received were fraudulent.

As Mr Z received funds totalling £4,095, but only transferred two payments out - totalling £2,460 - Lloyds Bank PLC consider that he gained £1,635 from the transactions and it registered details with CIFAS. Mr Z complains about this. He says he has been the victim of a scam and would like the marker removed.

## **background**

Our adjudicator noted that the bank had accepted that Mr Z was the victim of a scam, and therefore felt it unfair to record the marker simply because Mr Z had unintentionally benefitted from the event. Mr Z had said that he had not realised that the second payment had credited to his account, and those funds had been spent but the bank had not asked him to repay into his account those specific funds.

The adjudicator considered that it would have been more reasonable for Lloyds to hold Mr Z liable for the funds that he benefitted from instead of registering information with CIFAS. And, certainly, as the bank had accepted that Mr Z was an unwitting beneficiary of the funds, and victim of a scam, it was unfair to disadvantage Mr Z with the CIFAS marker.

The adjudicator was persuaded that Mr Z had lost an employment opportunity due to the information unfairly registered against him. She therefore recommended that the bank should:

- remove the CIFAS marker;
- pursue Mr Z for the £1,635 he benefitted from (along with a balance owed on another account); and
- pay Mr Z £350 compensation for the impact on him.

Lloyds did not agree with the recommendations of the adjudicator and has asked that the complaint be reviewed by an ombudsman.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

First, I should be clear that Lloyds has, in effect held Mr Z liable for the fraudulent funds that he spent. Broadly, when the first fraudulent credit was received, that cleared Mr Z's overdraft. He then paid a similar sum out, using his overdraft facility. Again, broadly, Mr Z spent a fair portion of the second fraudulent credit himself before the third fraudulent payment was received and he paid that out in accordance with the scammer's requirements. Mr Z then spent further on his account, increasingly using his overdraft facility before Mr Z's genuine salary was received – and this, broadly, cleared the overdraft, at which point Lloyds closed the account.

So, as I say, in effect, Lloyds has held Mr Z liable for benefitting from fraudulent funds and they have been repaid to the bank. I do not consider this ultimately material to the outcome of this complaint however.

Mr Z says he was unaware of the second credit being received and while the bank may speculate about why that may be - it says that Mr Z did access his online banking facility at the relevant time so he might be aware – Mr Z's evidence is that he did not realise that he was spending the fraudulent funds rather than funds from his overdraft facility. And I find that sufficiently credible so as not to feel able to safely conclude that he knowingly spent funds that he realised he was not entitled to.

Notwithstanding that, the bank says that it has accepted that Mr Z was not involved in obtaining the fraudulent funds. It says that the CIFAS marker was not added to reflect that Mr Z was involved in fraud but that he allowed funds to be received without question. But I am not satisfied that the marker that Lloyds has applied is appropriately applied for the circumstances in Mr Z's case. It is not disputed that Mr Z was an unwitting victim of fraud and he has not ultimately financially benefitted from the fraudulent monies.

In light of what I have said, I consider that Lloyds should remove the CIFAS marker it has applied for Mr Z and it should pay £350 compensation to Mr Z as recommended by the adjudicator. Given, my findings, Lloyds should not seek recovery from Mr Z of £1,635.

### **my final decision**

My final decision is that Lloyds Bank PLC, in full and final settlement of this complaint, must:

- remove the CIFAS marker; and
- pay Mr Z £350 compensation.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr Z to accept or reject my decision before 20 March 2015.

Ray Neighbour  
**ombudsman**