

The complaint

Mr A has complained that Starling Bank Limited registered a marker against him at CIFAS, the national fraud database.

What happened

In February 2023, Mr A opened a current account with Starling, then another bank shortly after. He registered his mobile phone to it, as well as his genuine phone number and email address, and verified himself with his passport and a video selfie. The card and PIN were sent to his home address. He later registered other devices, again using selfies.

In March 2023, Mr A received credits totalling around £1,100. Immediately after, his card and PIN were used for a cash withdrawal at his cash limit, then a number of further payment attempts which were declined. Similar activity happened with the other bank account.

Both banks received reports that the money Mr A had received came from victims of fraud. Starling asked Mr A about the payments, and received replies from his email and from a login he made using a video selfie. The replies complained about Starling blocking the account, claimed Mr A was entitled to the funds, and sent screenshots from interactions with the fraud victims to try to show that Mr A knew them.

Starling closed Mr A's account and registered a marker against him at CIFAS.

In April 2023, Mr A told Starling his phone and card were stolen and none of the activity was him. He denied replying to Starling's earlier messages, saying he never got their emails. He also denied registering the devices used to carry out the fraud. When the Starling advisor pointed out that Mr A had registered those devices using video selfies of himself, Mr A was unable to explain this and ended the call shortly after.

Later that same evening, Mr A emailed Starling from the same address they'd been messaging before. He admitted opening the two accounts used for fraud. He said a friend and their relative had met with him a number of times. They coerced him into opening each account and handing over the cards and his passport, which they still had. He never accessed the accounts. He didn't tell the truth before, because he was in fear from their threats. But he'd since spoken to a solicitor and reported the matter to the police, who'd advised him to be truthful.

Starling asked Mr A for evidence, like his communication with the friend, but he said he had none. He was unable to evidence speaking to the police, saying he didn't trust the police, and declined to send details of the solicitor he said was advising him. When questioned about his lost passport, he said he had in fact been given it back. He later made a police report, but was told that from what he'd given them, they had no lines of enquiry to pursue. Starling did not agree to remove the marker.

Our investigator looked into things independently and didn't uphold the complaint. Mr A didn't agree, so the complaint's been passed to me to decide.

What I've decided – and why

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

In order to register this marker, Starling were not required to prove beyond all reasonable doubt that Mr A had done something wrong – this decision is about a civil complaint, not a criminal case. Starling did need to have reasonable grounds to believe that Mr A had misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I think Starling did have sufficient grounds to register this marker. I'll explain why.

Starling, and the other bank involved, received multiple official reports that Mr A had received the proceeds of fraud from victims of crime.

I'm afraid that Mr A's testimony has been inconsistent, implausible, and at times clearly untruthful, even after he said he would tell the truth from now on. At different times, he's said notably different things or been contradicted by objective evidence about what happened when, what his involvement was, which devices he registered, what happened to his passport, when he reported this to the authorities, and so on. Mr A says that he's forgetful, and a number of months have since passed. But the contradictions in his testimony cannot be explained by simple forgetfulness, and much of this testimony was given not long after the fraud.

Mr A was unable to provide any evidence to substantiate of his latest version of events – not even a single text message. But he said he met with the friend and their relative a number of times in order to open the accounts, hand over the cards, set up new devices, and so on. So they would need to have communicated to arrange these meetings. And the friend was someone who Mr A had supposedly known fairly well before this, so naturally they would've had a message history over text, messaging apps, social media, or the like. It is simply not plausible that he would have no evidence of talking to these people.

Mr A did send in screenshots purporting to be an email from a solicitor who supported his innocence. But he repeatedly declined to let Starling see the date, time, email address, or other data which could let them verify if this email was real or not. And the text contains a number of spelling and grammar errors which a legal professional would be most unlikely to make, but which mirror Mr A's writing style. I am not satisfied that this email was genuine.

I appreciate why Mr A would like to see CCTV footage. Such footage is only kept for about a month as standard, so it won't still be available. And Starling are a bank, not a police force, so they were not able to demand camera footage from his accommodation block. Then even if they'd got CCTV from the cash machine involved, it would've only shown what the person making the withdrawal looked like. It would not have shown whether they were acting with Mr A's knowing consent or not.

Despite saying he didn't access the account at the time, Mr A used video selfies to operate the account a number of times during the period of the fraud. In these selfies, he read out access codes which had just been sent to him, so these were live videos. Mr A did not appear to be under any duress in these videos. And his selfies were used to facilitate the fraud. So Mr A was directly involved in the fraud.

Similarly, I can see that in the other bank account involved, Mr A carried out account activity right before the fraud using his biometric fingerprint. And while the fraud was going on, he also logged in to that account using his own phone at his genuine IP address.

While Mr A says he didn't speak to Starling in March, I can see that Starling's messages were sent to Mr A's genuine contact details – the same details he still uses. And one of the replies was made after Mr A logged in using a video selfie. So I think it's most likely that Mr A made that reply. At the least, I can see he would've been present and aware of it.

That reply argued that the fraudulent funds were Mr A's, attempting to use screenshots of interactions with the fraud victims to claim entitlement to the money. It also contained a complaint about Starling blocking some payments. Those payments were attempts to withdraw the fraudulent funds. So again, this strongly supports that Mr A was aware of – and involved in – the fraud.

Indeed, Mr A received notifications about what was going on throughout the fraud, and would've been aware of the activity at the time. One such notification informed him about the credits coming in. Just seconds later, his card was then put in an ATM to withdraw the fraudulent funds. It's unlikely to be a coincidence that the fraudster knew to start withdrawing money as soon as a notification was sent to Mr A. Again, this suggests that he was likely knowingly involved in the fraud.

In summary, Mr A has given inconsistent and implausible testimony, and has at points been untruthful, which he accepts himself. He's not been able to provide any evidence to substantiate his latest testimony, even when such evidence should be quite straightforward to provide. There's no evidence which shows or substantiates that he was an unwilling or unknowing participant in the fraud. Whereas there's quite a bit of evidence which strongly suggests that Mr A was a knowing, witting participant in the fraud. On that basis, I find it was fair that Starling registered the appropriate marker at CIFAS. It follows that it was also fair for them to close his account, which they were allowed to do under the terms.

This is a difficult message for me to give, and I know it's a difficult message for Mr A to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

My final decision

For the reasons I've explained, I don't uphold Mr A's complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 December 2023.

Adam Charles
Ombudsman