

## **The complaint**

Mr M complains that Lloyds Bank PLC registered a fraud marker about him at CIFAS.

## **What happened**

Lloyds said it hadn't made a mistake. It received a report that funds paid into Mr M's savings account in December 2018 were fraudulent. That money was transferred to his card account. And was all withdrawn using his debit card. A business decision was made to close his account and the marker was added. Lloyds said Mr M was provided with the opportunity to clarify events at the time. It didn't accept his version of events that this had happened because he lost his phone and card. So, the marker was maintained.

Our investigator didn't recommend that the complaint be upheld. She noted that Mr M said his laptop was stolen a few months earlier. And he said he had lost his card and phone. But she didn't agree that the marker was added incorrectly based on the information available.

Mr M didn't agree and wanted his complaint to be reviewed. He said that we'd sided with Lloyds from the start. He wasn't happy with the outcome, and he was clearly the victim here and wants a referral to the ombudsman.

## *My provisional decision*

I issued a provisional decision on 22 May 2023 as I wanted to explain how I'd assessed the information Mr M had provided and allow him to comment. I set out below what I said.

I needed to consider whether the report to CIFAS was made fairly. On this point, Lloyds 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. The evidence must be clear, relevant and rigorous.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I'd taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mr M was deliberately complicit in what happened

include whether he knew or ought to have known that the money wasn't legitimate, whether he may have benefitted from the money by keeping part and whether he has provided generic or inconsistent explanations.

I'd seen clear evidence that Mr M's laptop and bicycle were stolen from a shed at his home in January 2018. He was compensated through court proceedings. In an email about his complaint in March 2022, he said he later lost his bank card and phone and that on realising he contacted Lloyds and was told that his account would be frozen. He was 16 at the time and a student. He says he also called Lloyds when he found out that it had decided to close his account and he went to a branch and discussed the fraud. He says that although he believed that things were resolved his account was closed. And even though he'd paid back an overdraft of £53 his account was blocked again. Lloyds went on to consider his complaint and issued a final response in January 2023.

We started investigating it and in a call with our investigator Mr M said that he lost his card and phone in mid-November 2018 and didn't remember the last time he used his card. He reported it to the school but not to police. He explained that his phone cover had a wallet for the card. His phone did have a passcode. He went to Lloyds with his father and reported this and his card was blocked, and he was issued with a new card. Mr M then also said to our investigator he might have mentioned his account number and sort code to friends online. His online banking was accessible from his laptop and phone, and he says had autofill for details. He later added in an email that he hardly even used the account. He also said that he'd shared only his sort code and account number with an online friend in exchange for gaming coins at the end of October 2018.

Lloyds has no record of Mr M reporting his card lost before the payments on his account. I noted that a damaged card instead was recorded on 21 November 2018. And a card was reissued but no PIN sent out. I noted that the payments from his account in December 2018 were made with the new card number. It discussed what happened with him in April 2019 and he said that he had seen the credit on his statement but hadn't reported it. And that his card had been lost months earlier and he hadn't reported it. Mr M said he kept his PIN with his card.

Pulling things together Mr M's version of events is that his phone and card were lost, and someone was able to access his account. While he clearly had a laptop stolen I didn't see the connection of this to what happened a number of months later. There is no record of him reporting his card lost before the payments. He didn't report any existing or new card lost. His phone did have a passcode and even if say a username was saved security information would still have been needed to access the online app. I noted that the money came into his savings account, was quickly transferred into a card account which required access to online banking and was then all withdrawn using the card and PIN. Mr M has admitted disclosing at least some of his account details for it seems gain. He hasn't given a consistent version of events. Taking all this into account I considered that it's most likely he was complicit in what happened, and this could have involved him allowing someone else to use his bank details.

Lloyds says that it applied the CIFAS marker because Mr M received fraudulent funds into his account. So, I'd looked at whether it was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS.

Having reviewed Mr M's account of events and the evidence he has provided, I was satisfied that Lloyds had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I'd taken into account the following reasons:

- Mr M received fraudulent funds into his account and didn't report this to Lloyds at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Lloyds had grounds to believe that Mr M had used fraudulently obtained funds based on the evidence it had.

### **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.

Lloyds said that it didn't have any further comments to add.

Mr M didn't agree and stated that:

*"The second advisor failed to consider all circumstances, either you didn't mention to him, or he didn't consider, as previously stated, in online game I shared account and sort code details with an online friend as he claimed he was closing his bank account and needed to transfer some money, I didn't think much of it and shared account and sort code as they weren't confidential info."*

I considered all the information that had been provided before I reached my provisional decision. I'd taken into account a call Mr M had with our investigator. I referred to him saying that he'd shared his account and sort code details online. But that this didn't explain how someone unknown could access his online banking and make a transfer between his accounts and also use the card and PIN to make a withdrawal. Having also taken into account what he's said in response to the provisional decision I'm not persuaded that this makes any difference to the outcome and for the reasons I've already given. I appreciate Mr M will be disappointed by my assessment.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 August 2023.

Michael Crewe  
**Ombudsman**