

The complaint

Mr K has complained that Bank of Scotland plc registered a marker against him at CIFAS, the national fraud database.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In summer 2020, Mr K received about £2,500 for the sale of his cryptocurrency.

Bank of Scotland says it received a report that the funds Mr K received were fraudulent. It froze Mr K's account. Mr K offered to provide proof of the sale, but instead Bank of Scotland closed his accounts and registered a CIFAS marker against him. They also took £2,372.94 of Mr K's money and transferred it back to the original sender.

Our investigator looked into things independently and upheld the complaint. They thought Bank of Scotland should remove the marker, refund the money they took plus compensatory interest, and pay a further £300 compensation.

Neither side agreed. Mr K felt the compensation wasn't enough. Bank of Scotland agreed to remove the marker but felt it acted correctly in taking Mr K's money.

The complaint's been passed to me to decide.

I sent Mr K and Bank of Scotland a provisional decision on 11 July 2023, to explain why I thought the complaint should be upheld. In that decision, I said:

Based on what I've seen so far, I agree the marker should be removed, though I've made a higher award than our investigator. I'll explain why.

I need to consider whether this report to CIFAS was made fairly. On this point, Bank of Scotland needed to have more than just a suspicion or concern. It needs to be able to show that it had reasonable grounds to believe that fraud or a financial crime had been committed or attempted, backed up by evidence rigorous enough to support the matter being reported to the authorities.

CIFAS and our service have been clear that in situations like this, banks must investigate things first and give customers the opportunity to explain their conduct before filing to the National Fraud Database. Indeed, CIFAS go on to specify that customers should be given sufficient time to respond before any submission, and that businesses should try more than one method of contact.

As far as I can see, Bank of Scotland did not investigate things properly with Mr K at the time. Mr K offered more than once to show that the funds came from a legitimate sale, but it appears that Bank of Scotland did not take him up on this and instead simply registered the marker without investigating further. This is a point of serious concern. CIFAS markers can have severe effects, and must not be added without serious consideration.

I should also note that Bank of Scotland has declined to provide us with the fraud report it says it relied on, so I can't even be sure that it had any basis on which to be concerned in the first place.

On the other hand, Mr K has provided:

- proof of the sale of his cryptocurrency*
- his chat history with the buyer*
- logs from the platform showing that the buyer was using an established account with their real name and a verified phone number and email address*
- his transaction log showing that he did indeed provide the purchased cryptocurrency*
- his conversation with the platform's support team, where they confirmed the sale, offered to correspond with Mr K's bank if it contacted them, and confirmed they'd since banned the buyer.*

It is clear that Mr K was entitled to these funds. And this would have become clear to Bank of Scotland had it carried out any reasonable investigation in 2020. It seems what's most likely happened is that either a fraudster used someone else's money to buy crypto from Mr K without Mr K knowing anything was wrong, or that a false fraud report was submitted. Either way, it's clear that Mr K was innocent. So not only did Bank of Scotland not meet the basis of evidence needed to register this marker, it was in fact wholly unjustified in registering it.

Bank of Scotland feels it was entitled to give Mr K's money to the original sender, arguing that Mr K was not entitled to the money, there was fraud, and it had an indemnity from the sending bank.

As above, Mr K was entitled to the money – he got it from a genuine sale, where he provided what was bought. So Bank of Scotland is wrong there. As before, it hasn't actually shown that there was any fraud here. But even if I assume there was, there would be no justification in leaving Mr K deprived of both his goods and the money paid for his goods here – he didn't defraud anyone. To put it bluntly, Bank of Scotland cannot simply steal an innocent party's money, even if it's nominally to help another innocent party.

Bank of Scotland did not have any entitlement to take Mr K's money. While there are terms about returning mistaken payments, those don't apply here – this wasn't an issue of a payment being made by accident, but of alleged fraud. I also accept that, generally speaking, banks should try to return money that was sent because of fraud. But before doing so, they must first investigate and find out whether the recipient was acting fraudulently themselves or not – which Mr K was not. And while Bank of Scotland may have had an indemnity from the sending bank, that's just a promise between two banks – it does not allow Bank of Scotland to take customers' money if it otherwise shouldn't.

I find that Bank of Scotland was not entitled to take £2,372.94 of Mr K's own money, and that it did so without Mr K's consent – meaning this was unauthorised. So Bank of Scotland must reimburse Mr K for this money. It will also need to add simple interest, to compensate Mr K for the time he was without his money.

Mr K questioned the rate of compensatory interest we use – 8% simple. I understand his point that inflation has at points been higher than that. But the rate of compensatory interest is not based on inflation. It's a statutory rate from the courts, which is there to compensate someone for the time they didn't have their money. We don't know what Mr K would have done with the £2,372.94 had he not been deprived of it in 2020. He may have saved it and earned substantially less interest than 8% simple works out to, or he may have paid down a higher rate debt, or spent it, or anything else. We cannot know for certain. So instead of guessing, I think it's reasonable to award the statutory rate of compensatory interest, as the courts do in similar situations.

Mr K also set out some consequential losses he said he suffered because of the marker, and I'm grateful to him for doing so. Some of these relate to sign-up bonuses he says he missed out on due to Bank of Scotland's CIFAS marker. It think it's too difficult to conclude that this particular marker definitely caused those particular losses. Lenders usually have specific criteria, which Mr K may not have met in those cases anyway; he had other significant negative information on his credit file such as defaults; and Santander had also registered a CIFAS marker against him in relation to this matter. Of course, I do acknowledge that CIFAS markers often have very substantial effects on one's credit. So it's most likely that Bank of Scotland's did have a significant effect here, and likely did substantially contribute to Mr K's troubles in getting credit, or having his limits reduced. I also see that Mr K had some of his accounts closed, even long-standing ones, following this marker being registered – which is very likely to be linked. I've factored that all into the award.

Much of the costs also relate to Mr K's case with Santander. I understand Mr K feels that Bank of Scotland are responsible for Santander's CIFAS marker and subsequent actions. But businesses are responsible for their own actions. I cannot reasonably hold Bank of Scotland responsible for a separate business's own decisions.

I do find that Bank of Scotland treated Mr K exceptionally poorly here, and its disregard for its obligations has led to it reporting an innocent party on the National Fraud Database. It also effectively closed Mr K's accounts immediately – as they were blocked straight away – so it did not give him the proper notice there. I understand that this also caused Mr K some real inconvenience.

I find that Bank of Scotland is responsible for causing substantial distress, upset and worry to Mr K over a very lengthy period. It likely contributed significantly to his credit troubles, and caused him serious embarrassment at being falsely labelled as having attempted fraud. I've taken into account that some of this blame is shared by Santander, who also registered a marker in relation to this matter. And I have kept in mind that we are not the regulator – we're here to resolve complaints informally, not to issue fines or punish businesses. Taking into account our guidelines for compensation and the impact Bank of Scotland's actions likely had on Mr K, I find that £950 compensation would be fair to put things right here.

Since Santander's marker was based on the same incident, I also think Bank of Scotland should contact Santander as a matter of urgency to let them know that it has found Mr K did nothing wrong. That will help sort things out for Mr K. I will also forward Santander a copy of the final decision I make in this case.

I also think Bank of Scotland should provide Mr K with a letter confirming its error. That way, Mr K can provide the letter to lenders who turned him down or reduced his limits, and he may be able to get those decisions reconsidered. With that said, Mr K should probably hold off from doing so until both CIFAS markers have been fully removed.

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 response to the provisional decision, Bank of Scotland agreed to the redress in order to resolve things. It confirmed it was in the process of removing its fraud marker. It asked that if Mr K accepts the decision, could he provide either his account number and sort code (if he prefers to be paid by bank transfer) or his up-to-date address (if he prefers to be paid by cheque). It also asked us to pass on the message that parts of the redress may be paid at slightly different times if they come from different areas of the business.

Mr K explained that he was grateful for the provisional decision and didn't have any material information to add. But he didn't agree that the proposed redress covered his financial and non-financial losses.

I understand Mr K's point of view and appreciate where he's coming from. But as I explained in the provisional decision, having gone through his list of proposed financial losses, I found that much of it related to things like sign-up bonuses, which we can't fairly say were directly caused by Bank of Scotland's CIFAS marker alone – though I've taken into account that it's likely the marker had a significant effect.

Another large proportion related to costs incurred from Santander's CIFAS marker specifically, and the resulting dispute between Mr K and Santander. I acknowledge that Bank of Scotland filed the initial marker, and that Mr K was told to bring his claim against Bank of Scotland. But the fact remains that Santander is its own firm, independent from Bank of Scotland, which makes its own decisions and chooses its own actions. So I'm afraid I cannot fairly hold Bank of Scotland responsible for Santander's actions here.

I should reiterate that we are an informal alternative to the courts, so we look at things in a slightly different way to the courts, and we're not here to issue fines or punish businesses. Taking into account our guidelines, Bank of Scotland's role in the matter, and the likely contributions that its actions specifically had to Mr K's trouble and upset, I still find that £950 compensation is fair to put things right here, in addition to the other redress.

Mr K raised concerns about whether Bank of Scotland would carry out the redress. If Mr K accepts the final decision, then it will become legally binding, and Bank of Scotland will be required to carry out the redress within 28 days of the date we notify it of his acceptance. I hope I can reassure Mr K that Bank of Scotland is a well-established business which is used to receiving decisions from our service by now, so I do not foresee any large issues in it fulfilling the redress – not least as Bank of Scotland has already agreed to take those actions and has already started on removing the marker. I should note that once Bank of Scotland removes the marker, it may take a little further time for all the credit reference agencies to update on their ends. If Mr K doesn't hear from Bank of Scotland within the 28 day period, he is welcome to come back to our service and we can chase it up or talk him through any enforcement action needed. But I hope that won't be necessary.

So having carefully reconsidered the case, I've come to the same conclusions as before, for the reasons set out above.

Putting things right

I direct Bank of Scotland plc to:

- remove the CIFAS marker in dispute, if it has not done so already;
- refund the £2,372.94 it took;
- pay simple interest to Mr K on that £2,372.94, at the rate of 8% simple a year, payable from the date it was debited until the date it's returned[†]. This is to compensate Mr K for the time he didn't have his money;
- forward Mr K's evidence of entitlement to Santander, and inform it that Bank of Scotland has rescinded any claim of wrongdoing by Mr K, has found that Mr K was an innocent party, and had registered its CIFAS marker in error;
- provide Mr K with a letter which confirms that Bank of Scotland registered this CIFAS marker in error, that Mr K did not do anything wrong, and that any lending decisions made based on that marker may have therefore been incorrect;
- pay Mr K £950 compensation for the trouble and upset it caused.

[†] HM Revenue & Customs requires Bank of Scotland to take off tax from this simple interest. Bank of Scotland must give Mr K a certificate showing how much tax it's taken off if he asks for one. Mr K may be able to claim back the tax if he does not normally pay tax.

My final decision

I uphold Mr K's complaint, and direct Bank of Scotland plc to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 August 2023.

Adam Charles
Ombudsman