

The complaint

Mr M has complained that Bank of Scotland plc (trading as Halifax) registered a marker against him at CIFAS, the national fraud database.

What happened

In 2019, Mr M received £4,750 in bank transfers, which he then quickly withdrew in cash or transferred to an account of his at another bank. The money came from a victim of fraud.

Halifax asked Mr M for evidence he was entitled to that money. He said the money was for a car he'd sold and he'd provide evidence of this. But he didn't provide evidence. Halifax closed Mr M's accounts and registered a marker against him at CIFAS.

In 2023, Mr M complained. He said he did have proof of the car sale but had since moved home and couldn't find it. He instead provided a handwritten post-it note, a letter from a car insurer, and a screenshot of some texts he said he'd found.

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

I sent Mr M and Halifax a provisional decision on 14 February 2024, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to register this marker, Halifax were not required to prove beyond all reasonable doubt that Mr M had done something wrong. They did need to have reasonable grounds to believe that he'd 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 currently think Halifax did have sufficient grounds to register this marker. I'll explain why.

Halifax received an official report from another institution that the money Mr M received did not come from the sale of a car, but from a victim of fraud who'd been defrauded into paying Mr M.

The activity on the account is highly consistent with fraudulent use. For example, Mr M emptied his Halifax accounts of his own funds beforehand, meaning that none of his own money could be used to repay the fraud victim. Then when the fraudulent funds came in, he acted very quickly to withdraw them or send them to his other account, which meant they couldn't be easily recovered once the fraud was reported. Mr M appears to have been the sole beneficiary of the fraud.

Mr M says that the money came from selling a car. If that were the case, it would be very straightforward to evidence. Yet Mr M has not provided any acceptable evidence which substantiates he was owed this money for a car sale. He has not provided any of the relevant evidence he'd have from the DVLA, even when he said he would. The vehicle registration he provided does not match any car on the DVLA website, and we also checked with other relevant tools and records and found no link between the plate in question and any identifiable vehicle. And the reference for the credits which Mr M received did not say or reasonably imply that they were for a car sale.

The amount Mr M said he sold the vehicle for does not match the amount he received. He says he got the rest in cash, but there was no cash deposit at the time, and when we asked him for evidence of depositing this cash he didn't provide any. Mr M had no evidence of advertising the car, which he said was because he sold it in person to someone local to him. So we asked him to get back in touch with this local so they could vouch for him. But Mr M didn't respond to that either.

Mr M did provide a letter from a car insurer, showing he did once try to insure the registration he gave us. But this letter was from over two years before the incident in question, and said that the policy would not go ahead because Mr M had not provided his licence. The direct debit for that insurance was returned in 2017 and there are no further insurance payments for that registration in Mr M's historic statements. So this very much does not substantiate that Mr M still owned that car in 2019 or that he sold it to anyone.

In 2023, Mr M provided a handwritten post-it note saying he'd sold the car to an unidentified individual. But this note could've been written by anyone at any time, so I cannot reasonably rely on this as evidence. Mr M also sent us a screenshot of what he says were his messages with the seller. But the dates and amounts don't match what happened, the messages were all supposedly sent at the same minute, there are formatting issues which do not match the messaging app in question but are commonly present in online tools which create artificial screenshots of messages, and Mr M declined to send us the full unredacted message chain. The sender was anonymous, and when we asked Mr M to show us their profile and phone number, he again did not reply. I am not satisfied that this evidence is genuine.

Mr M said he used to have proof of the sale, but could no longer find it after moving home. However, Halifax asked him for it at the time. And I've listened to a call from just after the fraud, where Mr M was aware that Halifax found out the funds were fraudulent and that he needed to provide proof of the car sale. He said he would provide this evidence, as he wanted to keep this account open, but then he didn't provide it. It is neither likely nor plausible that Mr M would withhold proof of his innocence when he knew that he was in trouble for fraud, that his bank was investigating him, and that his bank account was being closed when he wanted it kept open. But that does fit very well with the possibility that he had misused his account.

Shortly before this incident, Mr M deposited a cheque for over £4,000 and then quickly withdrew or transferred away the money, similarly to how he spent the fraudulent funds. Halifax later received an official report that the cheque was counterfeit. We asked Mr M about that cheque, and for evidence of his entitlement to that money, but he didn't respond despite us chasing him. Following the counterfeit cheque incident, Mr M credited just enough to his account to enable a "pay at pump" transaction to work, then he spent much more on petrol than was available, meaning that Halifax were effectively made to pay for his petrol using their money instead of his own. Exploiting "pay at pump" transactions in this way is another known type of fraud. So Mr M's other account activity also strongly supports that he was misusing his account.

Mr M argued that Halifax registered the wrong type of CIFAS marker, but I'm afraid he's mistaken. The marker was for misusing his account and retaining wrongful credit, which is correct in this situation. The fraud didn't have to be the sole use of the account.

In summary, Mr M received and quickly moved on fraudulent funds. His activity is highly consistent with fraudulent use of an account, and he appears to have been the sole beneficiary of the fraud. Mr M has claimed entitlement to the funds, but has not provided any evidence which actually shows or reasonably substantiates that he was entitled to that money, even when he would have such evidence as standard. And Mr M also appears to have used his account for other fraudulent activity shortly beforehand.

So I currently think it was fair for Halifax to close Mr M's accounts and to register a marker against him at CIFAS. I realise this will not be the outcome Mr M was hoping for, but given the evidence I have so far, and the balance of probabilities, I'm currently unable to fairly reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 28 February 2024. But neither Mr M nor Halifax sent me anything new to consider.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

My final decision

I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 March 2024.

Adam Charles
Ombudsman