

The complaint

Mr K complains that Starling Bank Limited ('Starling') registered a Cifas marker against him without due cause.

What happened

The details of this complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, in October 2022, Starling took the decision to close Mr K's account with seven days notice and register Mr K with Cifas for misuse of facility. This followed Starling receiving a report from the sending bank that £600 had been paid (by someone I will call 'Mr A') into Mr K's account as a result of a scam. Mr K maintains that the dispute is an argument between former friends, and not fraud.

Mr K said that in 2022, he reacquainted himself with an old schoolfriend he had lost contact with. When they left school Mr A had owed Mr K around £600 which Mr K had assumed he would not get back due to the time that had passed. They began to discuss financial matters, and Mr K explained he had made money from ecommerce. His friend told him he was going to pay back the money he owed him – which happened to equate to roughly what Mr K charged people for e-commerce lessons. In light of their discussion, Mr K said he offered to provide him these lessons for free in exchange for the unexpected repayment of the loan. His friend agreed, and they met a few days later in a restaurant to start the lessons. He later told our service that he proposed forgiving the past debt if he paid the fee to enroll in his course. Either way, Mr K said Mr A agreed and sent the funds, and this was done with the reference of 'loan'. Mr K told our service that the payment took place whilst he was at a restaurant with Mr A, and showed the payment was sent 31 mins before he paid a bill in a restaurant. He provided a photo of him and another male, whom he said was Mr A, with location and time stamps showing he was in the area of the restaurant with another male at the time.

Starling said that they received a report from the sending bank that the £600 payment had been made as a result of a fraud. Their customer said they found adverts about the ecommerce lessons on a social media application and decided it sounded like a good way to make money. They said they got in touch with Mr K, whom they had never met before, then signed up for the course and sent the money over. They said they asked when the lessons would start, and later chased, but Mr K said he had other students he needed to finish working with before they could commence their lessons. As he was not receiving the service he paid for, he said he asked for a refund, but said that Mr K said he could not do this.

Upon receiving this notification from the sending bank, Starling contacted Mr K to ask him about the £600 payment. He said the payment was the repayment of a loan from a friend. He said he had given him the loan the last time he saw him and after this he asked he had asked about how to make more money. He said he offered his mentoring services in order to settle this loan between them. He said the friend, Mr A, was jealous of him due to the fact he was successful. He said that their financial position had changed, and that they had received ecommerce lessons from him but had not done as instructed and had lost money. He said they moved abroad just after they raised this claim. They asked if he had an advert showing what services he offered, time and date stamped conversations with the sender, or any proof of providing the services. Mr K maintained that the funds were for repayment of a loan, the service was optional, but said he had provided the service.

Starling reviewed what happened, and took the decision to close Mr K's account and register a Cifas marker against him for misuse of facility, relating to using his account to receive fraudulent funds. Mr K was not happy, and so complained to Starling, who did not think they had done anything wrong. Starling declined to remove the Cifas marker, or reopen his account.

Remaining dissatisfied, Mr K brought his complaint to our service. One of our investigators looked into what had happened and did not recommend that Mr K's complaint be upheld. They said that they thought Starling had met the evidential burden required to register a Cifas marker against Mr K. They also said that Mr K's version of events was not in line with the evidence received from both parties to this dispute.

Mr K didn't agree with our investigator's findings. He said that he had provided clear evidence that this was a dispute between two friends and not a fraud, and that he had provided services in line with what was agreed but that nevertheless, the payment was the return of a loan anyway. As no agreement could be reached, the case has 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.

Having done so, I have reached the same conclusion as our investigator – and for broadly the same reasons.

The type of Cifas marker that Starling asked to be applied is for 'misuse of facility' – relating to the account being used to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr K is guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. Cifas guidance from the time said:

- *"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police."*

So, the relevant finding for me to make is whether I believe Starling have sufficient evidence to conclude that the money sent to Mr K was as the result of a fraud, and that he was deliberately dishonest in relation to this, such that it would be able to escalate its concerns to Cifas. I do think Starling were entitled to do so, I'll explain why.

- I am not persuaded that Mr K has evidenced that he was owed the funds as the result of an earlier loan to Mr A, as I do not think Mr K has provided a consistent story about this, nor sufficient evidence to support it.
- I say this because in reviewing the correspondence Mr K had with Starling, Mr K appears to tell them he lent Mr A these funds the last time he saw him. He has told our service the loan took place whilst he was still at school, some years before this dispute took place.
- Further to this, Mr K has never provided evidence of what the loan was for, how a school student was able to afford to loan someone £600, evidence that he did indeed have these funds and gave them over to his friend. Whilst not impossible, it also seems unusual that his friend owed him the same amount as he says he charged for his course.
- Mr K has also been inconsistent with his story about the repayment of the alleged debt and the course – sometimes he has asserted he provided the mentoring as a

kind of reward for his friend repaying the long-owed debt, sometimes he said he waived the debt and took the £600 as payment for his mentoring services instead.

- Over the months since the dispute, in his communication with Starling and with our service, Mr K did not provide any evidence of communication with anyone that mentioned a loan at all – just his ecommerce mentoring services. This included messages he said were between him and Mr A, which said *'okay before we start do you understand that beyond this point, you cannot ask me for a refund or any money back because the resources I will provide you with and the time I take out of my day is worth money'*. This made no reference to any loan, and further would not make sense if he was providing the mentoring and course materials as a thank you for paying off the longstanding debt he had to Mr K.
- Since our investigator provided their opinion that the case ought not to be upheld, Mr K has provided us with messages between him and someone else which appear to discuss the previous loan – but given the late stage these were provided in this investigation, I cannot say I find them to be either persuasive or credible.
- So having considered all of this, I do not think it is most likely that Mr K was indeed owed these funds by an old school friend as he has asserted.
- I do think it is plausible that Mr K has been providing people with mentoring services regarding ecommerce. He has shared communications with our service that show him explaining his course, some basics in ecommerce in messages, and reviews from people he has helped that they have sent him over text message.
- However, I am not persuaded that Mr K provided Mr A with mentoring services. Mr A has said that he did not know Mr K and found his advert on a social media platform and paid him the funds. He said he was never provided with the services, nor a refund. He said he did not know Mr K before engaging with him in order to attempt to learn ecommerce.
- Mr K has provided messages which he says were between him and Mr A. However, in the first instance the messages he sent were from a social media app and did not show any date or time, nor did they show this was indeed a conversation between Mr A and Mr K.
- As outlined above, Mr K did provide text messages after our investigator gave their opinion on this matter, but I am not clear when these were sent or received again. Whilst Mr K appeared to provide us with some metadata, I am not persuaded that this relates to when the messages were sent, but instead it appears it may relate to the time the screenshots were taken. And, as above, the appearance of these messages later in the investigation lead me to conclude they are neither persuasive nor credible.
- Mr K has shown evidence which he says supports that he was with Mr A at a restaurant and this is when Mr A paid him funds and they started the course. He has shown a photo of him with another young man, tagged in the proximity of the restaurant he was in. The proximity of the payment to him going to a restaurant with another young man has not persuaded me that Mr K met Mr A and delivered agreed services relating to ecommerce mentoring.
- Whilst I accept it is possible that Mr K did provide some services to Mr A, I cannot say on the evidence available to me that this appears to be most likely what happened here. It appears on the evidence that Mr A thought he was paying for such services, and there is no compelling evidence that such services were provided.

So, when considering everything, I do not think that Mr K's version of events is most likely what happened here. I have not seen any compelling evidence that Mr K provided Mr A with

either a loan or with ecommerce mentoring services. As such, I think Starling were entitled to conclude that Mr K had not demonstrated a right to the funds he was sent. And so, it follows that Starling have met the requirements to refer Mr K to Cifas and I will not be asking them to do anything further in regard to the marker

I have also reviewed the terms and conditions that were applicable to Mr K's Starling account at the time it was closed. The terms allowed for Starling to close Mr K's account with immediate effect where they suspect he was using the account for criminal or fraudulent purposes, amongst other reasons. Given everything I have outlined above, and considering these terms and conditions, I think Starling were entitled to close Mr K's account with immediate effect, and so I think they acted fairly and reasonably in closing his account with 7 days notice in this case.

My final decision

My final decision is that I do not uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 April 2024.

Katherine Jones
Ombudsman