

The complaint

Mr M complains that Al Rayan Bank PLC won't refund disputed transactions from his account, loaded a negative marker against him and didn't supply him with the statements he requested. He'd like the transactions refunded, the marker removed and statements provided.

What happened

Mr M had an account with Al Rayan Bank.

Mr M's unhappy that around £39,000 of transactions from 6 November 2017 to 5 January 2018 were carried out from his account without his authorisation. I understand this will disappoint Mr M but as our Investigator explained, this complaint point has already been dealt with by our service. Therefore I won't be able to consider it further.

But, I can consider the loading of the negative fraud marker. On 5 February 2018 Al-Rayan loaded a negative fraud marker for misuse of facility against Mr M's name on the National Fraud Database.

In March 2023 Mr M made a request for statements from his closed Al-Rayan bank account. The bank advised him that he'd need to pay £5 per statement, making a total of £30.

Mr M complained to Al-Rayan that he didn't receive the statements. But Al-Rayan rejected the complaint, advising they hadn't received the £30 requested. And as a result they didn't provide the statements.

Mr M brought his complaint to our service, and also complained about the previous disputed transactions and the negative fraud marker.

One of our Investigators looked into Mr M's complaint. Our investigator asked Al-Rayan for comments on the negative fraud marker. The bank advised that they'd loaded the marker due to fraudulent disputed transaction claims.

Our Investigator asked Mr M for any evidence to show he'd made the £30 payment for his statements however Mr M didn't directly respond.

After reviewing all the evidence they concluded Al-Rayan acted fairly in loading the fraud marker and not providing the statements.

Mr M didn't agree. In response he added:

- In September 2017 he was in a car accident, and lost all of his belongings
- Shortly after, his house was burgled, set on fire and he lost his life savings

As Mr M didn't agree the case was passed to me to decide. I reached out to both parties for more information, including asking Mr M if he can provide evidence that he paid £30 for the statements. Mr M responded but didn't confirm if he'd made the payment or not.

He reiterated that he wanted the negative fraud marker removed and the disputed transactions refunded.

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.

Negative fraud marker:

The marker that Al-Rayan have filed is intended to record that there's been a 'misuse of facility'. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr M is guilty of a fraud of financial crime, but they must show that there are grounds for more than mere suspicion or concern. The relevant rules say:

- "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."

To meet the standard of proof required to register a marker, Al-Rayan 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.

The relevant finding for me to make is whether I think there is sufficient evidence to meet this standard of proof, to determine whether Al-Rayan were entitled to escalate their concerns. Having reviewed the evidence presented by Mr M and Al-Rayan I'm satisfied they've acted fairly here. I'll explain why below.

Al-Rayan have explained that the negative fraud marker was loaded for fraudulent disputed transaction claims. Mr M brought a complaint to our service in 2019 regarding these disputed transactions, and our Investigator concluded that on balance Mr M most likely carried them out – and therefore it was fair for them to hold Mr M liable for the transactions.

As our service has already investigated whether Mr M carried out the transactions or not, I can't reconsider this. What I can consider is whether or not Al-Rayan have followed the correct process in loading a negative fraud marker. And I understand this will disappoint Mr M but I'm satisfied they have. So I won't be asking Al-Rayan to remove it. However, having seen a copy of the loading I can see it was loaded on 5 February 2018. Negative fraud marker loadings stay on the National Fraud Database for 6 years – which means this marker should now be removed.

Statements:

I've reviewed a copy of Al-Rayan's terms and conditions – and I'm satisfied these state a customer is required to pay £5 per statement. I've also listened to two phone calls provided by Al-Rayan which involve Mr M requesting statements spanning a six year period, and staff members telling him he'll need to pay £30 to receive them. I'm pleased to see that one of the staff members also advised Mr M that he can reduce the cost by only having transactions instead of full statements – as this would lead to a £5 annual charge, rather than £5 per each month.

Al-Rayan have advised that Mr M didn't pay the £30 charge – I've asked Mr M about this but

he's not answered the question or provided evidence he made the payment. It follows, I can't say Al-Rayan acted unfairly in not providing the statements to him.

My final decision

My final decision is I don't 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 8 April 2024.

Jeff Burch
Ombudsman