

The complaint

Mr S complains that Lloyds Bank PLC closed his account and loaded a negative fraud marker against him. He'd like his account reopened and the marker removed.

What happened

The detailed background of this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

On 8 February 2023 over a period of about 20 minutes Mr S received five payments into his account totalling just under £2,000. Immediately after the payments were received the majority of the funds were withdrawn via one cash withdrawal of £300 and a counter withdrawal for £1,165.

Lloyds received contact from another bank, I'll call Bank S, to let them know they'd received fraudulent funds into their account. Lloyds contacted Mr S and asked him some questions about the transactions.

Mr S initially advised that he'd received the funds for gardening and construction work he'd completed. But later in the conversation Mr S corrected himself and said he didn't know who the payee was. Lloyds didn't accept Mr S's explanation so made the decision to close his account and load a negative fraud marker against him on the National Fraud Database.

Mr S has since advised Lloyds and our service that the funds weren't in fact received for work he'd completed. Instead, he was threatened by a large group of people, held at knife point and forced to withdraw the funds received in his account.

Mr S added that didn't inform Lloyds when he first spoke with them because he was threatened and was worried for his safety. But Lloyds reviewed what Mr S presented and didn't think they'd acted unfairly.

Mr S didn't accept Lloyds' response so brought his complaint to our service. Mr S explained that he hasn't been able to get paid into his bank account and he's finding the whole situation very stressful.

One of our Investigators looked into his complaint but didn't think Lloyds acted unfairly in closing Mr S's account and loading a negative fraud marker against him.

Mr S didn't agree, and asked for an Ombudsman to consider his complaint. So 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.

Lloyd can only close accounts in certain circumstances and if it's in the terms and conditions of the account. Lloyds have relied on the terms and conditions when closing Mr S's account.

The terms explain that Lloyds can close Mr S's account without notice for certain specific reasons. Having considered the full circumstances of Mr S's account closure I'm satisfied Lloyds acted fairly when doing so.

The marker that Lloyds have filed on the National Fraud Database is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, Lloyds aren't required to prove beyond reasonable doubt that Mr S is guilty of a fraud or 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”*

What this means in practice is that Lloyds must first be able to show that fraudulent funds have entered Mr S's account, whether they are retained or pass through it. Secondly, Lloyds will need to have strong evidence to show that Mr S was deliberately dishonest in receiving the fraudulent payments and knew they were, or might be, illegitimate payments. This can include allowing someone else to use his account in order to receive an illegitimate payment. But a marker should not 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 marker, Lloyds 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 Lloyds were entitled to escalate their concerns.

I've seen evidence, shared by Lloyds which shows they received a fraud report from Bank S regarding payments received into Mr S's account. But, on its own this isn't enough to say that Lloyds have acted fairly in loading a marker on the National Fraud Database. I also need to assess whether Mr S was *complicit* in receiving the funds.

I'm pleased to see that Lloyds followed best practice guidance in contacting Mr S to discuss why he received fraudulent funds into his account. Having considered how Mr S responded I'm satisfied Lloyds acted fairly in concluding he was *complicit* in receiving the funds. I say this because:

- Mr S advised Lloyds and our Investigator that he was threatened by a large group of people who forced him to withdraw funds from his bank account. And he didn't initially share this with Lloyds as he was fearful of the group. I've taken into account that Mr S initially told Lloyds that he received the funds due to gardening and construction work that he was carrying out, then said he didn't know the payees. And that he's been unable to provide any evidence of interactions with this group – including any threats. Having considered these factors I find this explanation unlikely.
- Mr S received payments of just under £2,000 into his account but he withdrew just under £1,500 leaving around £500 of payments in his account. Mr S's account wasn't blocked at this time, meaning nothing prevented further transfers or withdrawals. If a group had threatened Mr S, as he advised, I'd expect them to take *all* the funds in his account. But this didn't happen.

- Within two hours of the last fraudulent payment being received a payment was made from Mr S's account to a sports shop. Mr S explained one of his friends wanted to make an online payment for trainers, but didn't have their card details. So they asked Mr S if they could buy them from his card, then pay him back. I find it surprising that shortly after the incident above, which Mr S has explained was understandably very traumatic, Mr S was making large purchases to a sports shop via his card. And wasn't concerned that the group might still have access or attempt to withdraw further funds. I also haven't seen any evidence on Mr S's statements that he received a payment from a friend to cover the cost of the trainers. And I note the trainers were purchased using funds from the fraudulent credits received.

For the reasons I've outlined above I'm satisfied Lloyds acted fairly in loading a negative marker against Mr S on the National Fraud Database.

It follows, I won't be asking them to do anything further.

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 S to accept or reject my decision before 30 December 2024.

Jeff Burch
Ombudsman