

The complaint

Mr C complains that N26 Bank GmbH loaded a Credit Industry Fraud Avoidance System (CIFAS) marker against him. And he'd like the marker removed.

What happened

In February 2019 N26 received contact from two banks informing them that Mr C had received fraudulent credits into his account – both for £140.

Within a few days of the funds arriving online transfers and ATM withdrawals had been carried out. And no funds remained in Mr C's account.

N26 carried out an investigation and on the 20 February 2019 closed Mr C's account with immediate effect.

N26 also loaded a marker for Category 6 Misuse of Facility with CIFAS.

In July 2019 Mr C attempted to open another N26 account and an account with a third party bank. But after initially being successful these accounts were both immediately withdrawn and Mr C explained he was advised to contact CIFAS.

Mr C complained to N26.

N26 didn't uphold Mr C's complaint, said they'd acted fairly and followed their regulatory requirements. So he brought his complaint to our service.

One of our investigators looked in Mr C's complaint. They asked him more details about the account activity. Mr C explained that a few days prior to being notified by N26 his account had been closed, he'd been on a night out. And he thought it was likely he'd lost his N26 card at this point – along with his wallet. He initially explained to our investigator he wasn't sure what other information he had in his wallet, but he thought he had written down his N26 password – for online banking – and his email address. And it also contained his driving licence. During a later conversation he also explained his card PIN was written down too. Mr C explained he didn't notice his wallet was missing until N26 contacted him to let him know his account was being closed. And he confirmed having no knowledge of the account activity.

Our investigator didn't uphold Mr C's complaint. They said they found it surprising Mr C had all of his N26 details on him in the wallet, considering he had no money in the account and had advised wanting the card to use on international holidays. They'd also asked Mr C to provide evidence he'd requested a new driving licence but he hadn't been able to provide this.

Mr C didn't agree. In summary he said:

- It's not fair to say it's a surprise that he kept all of his N26 details in his wallet,
- That he thought he'd kept his wallet with him, and only needed his driving licence as ID which is why he didn't notice it was missing until contacted by the bank.

- He did apply for a driving licence, but can't provide evidence of this.
- Just because the IP addresses are the same as ones he's used before doesn't mean he was involved. Instead it's likely if someone from his home area stole his wallet then the IP addresses would be a match. And it's also possible for a fraudster to amend IP addresses – and make it look like it's coming from a different area.

Our investigator responded to Mr C to ask if he could provide any evidence that it's possible for IP addresses to be amended, but Mr C wasn't able to do this.

As Mr C didn't accept our investigator's outcome it's been passed to me for a decision.

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.

And in doing so I've come to the same conclusion as our investigator. I'll explain why below. The marker that N26 have filed with CIFAS 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, they're not required to prove beyond reasonable doubt that Mr C is guilty of a fraud of financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- *“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.”*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their 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.

I've seen evidence that fraudulent funds were received into Mr C's account in February 2019 and moved on to other locations. But, for me to be satisfied the marker was loaded fairly I need to be satisfied there's evidence that Mr C knew his account would be receiving the payments and knew or suspected they were illegitimate. I'm satisfied this is the case, and I say this because:

- Once the fraudulent funds were received into Mr C's account they were moved on via online transfer and ATM withdrawal. Mr C says he has no knowledge of the fraudulent funds, and didn't carry out the online transfers or ATM withdrawals. For a fraudster rather than Mr C to have carried out the withdrawals and online transfers they'd have needed access to Mr C's debit card, his PIN and online banking details. Mr C's explained that he thinks he lost his wallet just prior to the fraudulent funds entering his account. And his wallet contained his debit card, along with his online password, email and PIN which he'd written down. Mr C says he took out his bank account with N26 so that he could complete international transactions without charges and never funded the account. I find it strange that when Mr C lost his wallet

he had such a large amount of personal data relating to his N26 account on him. And I can't see a plausible explanation for this.

- Mr C said at the time he lost his wallet his driving licence was inside. Our investigator asked Mr C to provide evidence that he requested a new driving licence, but Mr C's been unable to provide this.
- I find it surprising that Mr C didn't notice he'd lost his wallet for *seven days* until N26 notified him that his bank account was being closed. I understand that Mr C's explained he used his mobile phone to make payments, his main account debit card wasn't in his wallet at the time and he didn't need his driving licence during that period – but I still find it unusual he failed to notice.
- Mr C's account was accessed via online banking on a significant number of occasions before and after the fraudulent credits entered his account. A number of different IP addresses are recorded by N26's online banking records, but all of them match previous IP addresses used to log in. Mr C argues that this would make sense if someone local to him had taken his wallet and card. Or someone could have altered where the log ins seem to be coming from. I accept both of these scenarios are possible – albeit I've not seen any evidence to support this - but on balance I'm satisfied this evidence indicates Mr C was likely involved.

I realise this will be frustrating and disappointing to Mr C, but for the reasons I've outlined above I'm satisfied that N26 have enough evidence to record a CIFAS marker against Mr C. And it follows I won't be asking them to do anything further here.

My final decision

I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 October 2020.

Jeff Burch
Ombudsman