

The complaint

Mr K complains that National Westminster Bank Plc has unfairly recorded a marker at CIFAS, the national fraud database.

What happened

Mr K opened an account with NatWest in August 2018. NatWest told Mr K it would be closing the account in September 2018. He later found that it had recorded the marker and complained.

NatWest said in its final response that fraudulently obtained funds had been paid into the account. It said it had placed a stop on the account to encourage Mr K to contact it when he couldn't access his money. He didn't do so at the time. Mr K had later told it he allowed someone else to use his account, but NatWest said this wouldn't be a reason to remove the marker.

Our investigator didn't recommend that the complaint be upheld. He considered information Mr K had provided about a friend encouraging him to open the account for foreign exchange trading. And that Mr K claimed that this friend acted fraudulently not him. But our investigator didn't conclude that it was most likely that Mr K had no awareness of how his account was being used. He said that he thought NatWest had acted fairly.

Mr K didn't agree and wanted his complaint to be reviewed. He thought that some of the information he provided that had to be translated may not have been seen. He had no links with people who carried out frauds and had opened this account only for foreign exchange transactions. He trusted his friend and didn't know what he'd done. Mr K said he thought that the video clips he'd obtained recently and the chats with this person at around the time the account was opened showed that he was taken in. The marker is having a significant affect on him as he said his other bank account was closed.

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.

I need to consider whether the report to CIFAS was made fairly. On this point, NatWest needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

I've looked closely at Mr K's complaint letter to NatWest. He said that he trusted this friend and that he had helped him when he first came to this country. And that he sat with him while Mr K opened the account. Mr K stated that he didn't put any money in as it was supposed to be a secondary account for foreign exchange trading. His friend would do the first couple of trades and he allowed his friend to use his card. Mr K said he questioned him about some unknown transactions, but he believed these were related to currency trades. And he said he didn't really understand it and didn't question it when the account was

closed, and he opened another bank account. He said that his lack of understanding of the financial systems and his language barrier meant he was taken advantage of.

Mr K has explained to our investigator that he already had an account with another financial business. He said his friend wanted to pay in money to the new account and that it was used for two weeks for normal spend including at restaurants which he said was to activate his card.

I appreciate that Mr K responded to our investigator's request for any information to back up what he said. I've looked at the translation of all the exchange of messages Mr K says was with the friend involved at the time. And at what he says was recent contact with him by video on social media as well as with a mutual friend. His aim was to show that his friend was dishonest and routinely carried out fraud.

This information is difficult both to verify and weigh up and I also can't know if this is all of the exchanges with the person involved. Mr K hasn't reported this person to the authorities and also relies on a third party setting out what type of fraudulent activity this person is involved in. Even if I was to accept that there was a third party using his account and he acted fraudulently there is nothing on the information provided by Mr K taken at its highest in my view that shows Mr K didn't know about this at the time.

What I can infer is that Mr K was interested in making money from trading foreign exchange. His complaint letter to NatWest shows that he didn't ask too many questions about what was happening to an account in his name that he was responsible for. His explanation that this account was only for foreign exchange is at odds with how it was used for a couple of weeks. And he didn't do much to question where what he accepts was unusual money that came into his account had gone – when his statement shows it was all quickly withdrawn using his card and PIN. I don't find it credible he reasonably thought this was all related to foreign exchange trading. He didn't ask NatWest why his account had been blocked and closed at the time - something which ought to have raised some concerns in my view especially as he says his friend wasn't then in as much contact with him.

I'm afraid I'm not persuaded it's most likely Mr K was an unwitting participant here. I accept he didn't know about the CIFAS marker added then. But I think it most likely that he realised that because of the type of activity on the account it had been closed. I appreciate it's difficult for him to show he wasn't involved. But he allowed his account to be freely used and fraudulent funds were deposited and then taken out of his account. I can't know who did that and it is only Mr K that clearly says it wasn't him. Even if it was this other person I'm satisfied on balance Mr K had knowledge that his account wasn't being used legitimately and that he allowed this to happen and did nothing about it.

NatWest says that it applied the CIFAS marker because Mr K received fraudulent funds into his account. So, I've looked at whether NatWest was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that NatWest needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr K's account of events and the evidence NatWest has provided, I'm satisfied that NatWest had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr K received fraudulent funds into his account and didn't report this to NatWest at the time.

- He authorised the withdrawal of the funds, even if by a third party and so was in effective control of who had the benefit of this money.
- NatWest had grounds to believe that Mr K had used fraudulently obtained funds based on the evidence it had.

I appreciate what Mr K says about the impact the marker is having on his ability to access financial services but I'm afraid I don't have a reasonable basis to require NatWest to do anything further.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 November 2020.

Michael Crewe
Ombudsman