

The complaint

Ms J complains that N26 Bank GmbH (“N26”) recorded a CIFAS marker against her name. CIFAS is the UK’s fraud prevention agency.

What happened

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

In March 2019, Ms J opened an account with N26. On 28 April 2019, the account was credited with funds totalling £1,088, which were then withdrawn at cash machines and used to make several card payments. The funds were later identified as fraudulent – meaning the holder of the account where the funds originated hadn’t authorised the payment that Ms J received.

By way of an email sent on 7 June 2019, N26 explained to Ms J that they had closed her account and that if she had a positive balance on it, she should contact them. Ms J responded saying that her card and mobile phone had been lost/stolen in March. She requested the return of funds she said had been paid into her account. She also said she thought it was unfair of N26 to close her account.

Ms J later discovered that N26 placed a CIFAS marker against her name because of the £1,088 that was credited to her account. Ms J complained to N26 about this. In short, she said she knew nothing about the funds credited to her account on 28 April.

N26 investigated Ms J’s complaint. They said they were provided information by another institution about the £1,088 credited to Ms J’s account. Having reviewed this, they said they were obliged to report it to CIFAS.

Unhappy with N26’s decision, Ms J referred her complaint to our service. One of our investigators didn’t uphold the complaint. He thought N26 had acted fairly. Ms J didn’t agree with the investigator’s findings, so she asked for an ombudsman to consider the case.

In July 2020, I issued a provisional decision in which I said:

“I’m satisfied that the payments made to Ms J’s account with N26 were fraudulent and weren’t authorised by the respective account holder. Their own bank would have investigated these payments before reaching that conclusion.

Ms J may not have been directly involved in the credit of the funds. However, I’m not persuaded that she had no knowledge of the payments and withdrawals.

I don’t find Ms J’s testimony about what happened to her N26 card in March to be reliable, as she has provided different explanations at different times.

In her response to N26's email explaining they would be closing her account, she said that her mobile phone and card had been stolen in London in March. However, in a second email to N26, she changed her testimony stating that she had in fact lost her mobile phone and card. When Ms J contacted our service about her complaint, she said that she didn't know if her mobile phone and card had been lost or stolen, but thinks it was probably stolen.

Ms J also hasn't been entirely clear about when she became aware her card, as she says, was lost/stolen. In her first email to N26 she gave the impression it was in March. However, in her second email, she said she hadn't realised her card was missing until N26 informed her about her account closure in June. When Ms J contacted our service, she said when her mobile phone and card were lost/stolen she, "...didn't take much notice of it", suggesting that she knew before N26 notified her.

Having carefully considered Ms J's testimony, I'm not persuaded it's credible because of the inconsistencies. Moreover, even if Ms J's card was lost/stolen – which I don't accept – in late March, the person who found/stole the card didn't credit Ms J's account with the funds concerned until 28 April. I find it unlikely that a fraudster would wait almost a month before doing this, as they would've run the risk of the card being blocked – which surprisingly Ms J didn't do.

Even if I were to accept Ms J's testimony, there is evidence that contradicts her assertion that she had no knowledge of the payments and withdrawals in question.

Looking at Ms J's statements, I can see that there were at least three ATM withdrawals in April and May 2019. These withdrawals would've required Ms J's genuine card and PIN. I haven't seen any evidence to suggest that Ms J's PIN was compromised in any way. So, I'm persuaded that it's more likely than not that Ms J made these withdrawals herself or provided her card and PIN to a third party to do so.

Sometime in May 2019, Ms J's card was used to make a payment at a grocery store, which again, I think was made by Ms J, or a third party she provided her card to. I say this because the grocery store is located in the area in which Ms J lives. I find it highly unlikely that – if Ms J's testimony is to be accepted – the person who found/stole her card in London, would use it miles away, coincidentally, in the area in which Ms J lives.

Lastly, I also think it's unlikely that a fraudster would have made payments to a random account, unless they had access to it to be able to use the funds.

Taking all the above points together – I think there would have been good grounds to report the events here to the police to investigate, and that N26 were therefore justified in placing a CIFAS marker against Ms J's name."

N26 didn't respond to my provisional decision. Ms J responded to say that she disagreed. Now both sides have had an opportunity to comment, I can go ahead with my final 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.

In response to my provisional decision, Ms J says she lost her mobile phone and card sometime in March, but assumed they were stolen, as the location feature on her mobile phone was switched off when she attempted to locate it. At the time, she didn't know how

the fraud process worked, so she didn't think about blocking her card. She also points out that the reason she had requested the remaining funds in her N26 account was because the funds were meant to be credited to another account.

Ms J adds that she has paid for a service, which shows that her N26 account and email passwords are on the dark web, which explains how the alleged fraudsters accessed her accounts and found out where she lives. Finally, Ms J says that the evidence against her is coincidental, as the alleged fraudsters have made it seem as if she had a part in the fraud. She says if she was aware of the fraudulent activity happening on her account, she would've flagged this with N26.

I've considered Ms J's points, and I acknowledge she doesn't accept my findings, but I still think N26 had good grounds to report the events in question to the police to investigate, and that they were therefore justified in placing a CIFAS marker against her name.

Even if Ms J's account details were on the dark web as she claims, this doesn't explain how her PIN was obtained. The ATM withdrawals which took place in April and May 2019, would've required Ms J's genuine card and PIN. No evidence has been provided showing that Ms J's PIN was compromised in any way. Moreover, it seems highly unlikely to my mind that a card stolen in London, would then be used miles away – at a grocery store – in the same area where the victim of the theft lives.

Taking all the circumstances into consideration, I'm not persuaded that N26 need to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 5 October 2020.

Richard Annandale
Ombudsman