

The complaint

Mr S complains that National Westminster Bank Plc recorded a CIFAS marker against his name with CIFAS, the UK's fraud alert service.

What happened

Mr S had a current account and two savings accounts with NatWest. Between 5 February and 5 March 2018 Mr S's current account received a large number of credits by way of bank transfers from a number of different sources.

On 5 February 2018 a credit of £4,212.38 was paid into Mr S's current account. At around the same time, these funds were withdrawn via fifteen separate payments ranging from £2 to £2,520.00 via mobile banking to payees set up using online banking.

On 22 February 2018 a payment of £6,660.07 was paid into Mr S's account. This was followed by a further credit of £7,462.00 on 23 February 2018. These funds were withdrawn in ten separate transactions via mobile banking, cash machines, point of sale transactions and a branch payment.

On 5 March 2018, three payments of £1,915.00, £1,897.00 and £1,970.00 were credited to Mr S's account. These funds were withdrawn on the same day via mobile banking and a cash machine withdrawal.

NatWest then received notification from a number of other banks, each saying that their customer had been the victim of a fraud – in other words money had been transferred from their customer's account without their authorisation into Mr S's account with NatWest. NatWest accepted what the other banks said and wrote to Mr S on 9 March 2018 to let him know that his accounts would be closed. And it recorded information with CIFAS.

Mr S has explained that some months later, he was having difficulty opening a bank account and became worried that he'd have trouble obtaining a mortgage in the future due to the marker. He says he was aware of the activity on his account but was focussed on his studies and part time job so didn't have time to do anything about it and alert the bank. He said he didn't carry out the transactions. And said he lost his wallet which contained his bank card, online banking details including his PIN along with his mobile phone, which he said was unlocked via his thumb print or pass code. He said his passcode, which was his date of birth, was the same as his PIN and how an unknown individual was able to access his account.

Mr S referred his complaint to our service where one of our investigator's looked into things for him. She couldn't see how Mr S's mobile banking, bank card and PIN were all compromised and thought it was more likely than not that Mr S had made the transactions himself or authorised a third party to make them. She hadn't seen any evidence to show Mr S had reported his bank card as lost or stolen. So, she didn't recommend NatWest should remove the CIFAS marker. Mr S disagreed and asked for an ombudsman to review his complaint.

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.

Having done so, I've come to the same conclusions as the investigator. I'll explain why.

It's not in dispute that the payments made into Mr S's account were fraudulent. This means Mr S had been the beneficiary of a number of credits which weren't intended for him but for someone else. That in itself doesn't mean that Mr S was involved or knew about them. The bar for recording a marker is very high. NatWest needed to have a reasonable belief the matter could be reported to the police. A suspicion or concern isn't enough. 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 and what the rules say about applying such markers.

Having looked at all the evidence NatWest has provided and reviewed what Mr S has said about what happened, I'm satisfied that the bank had enough evidence to record a CIFAS marker against Mr S. I say this for the following reasons:

- NatWest has evidence that the credits received into Mr S's account on 5, 22, and 23 February 2018 and 5 March 2018 were fraudulent
- To carry out the mobile banking withdrawals an unknown third party would have needed to access Mr S's bank card, PIN and online security information. The transactions were carried out using Mr S's mobile phone and from an IP address he'd used previously for transactions he hasn't disputed.
- Mr S initially told the investigator that his wallet containing his bank card and bank details (including his online customer number and PIN) had been lost between September 2017 and January 2018. More recently he said this had occurred sometime around 5 February 2018. However, I can see from looking at Mr S's account statement that there are a number of undisputed transactions before, during and after the disputed transactions, such as point of sale transactions and cash machine withdrawals, which would've required Mr S to have been in possession of his bank card.
- I can also see that Mr S continued to receive credits into his account and made undisputed payments at the same venues before, during and after the fraudulent credits were paid into his account. So, I think it's likely Mr S was in possession of his bank card and mobile phone between September 2017 and March 2018.
- There's no evidence that Mr S reported his bank card as lost or stolen to the bank. And there's no evidence that he's reported his phone as lost or stolen. Even if I accept however, that Mr S lost his card and mobile phone that doesn't explain how anyone who found them knew Mr S's passcode to unlock his mobile phone in order to make the online withdrawals.
- Mr S says he was simply too busy with his studies to report what was happening to the bank. I note however, that on 24 February 2018, the bank questioned Mr S about a £500 transaction he'd made. He told the bank this was to buy a car. I think this provided Mr S with an opportunity to alert the bank what was happening with his account. But he didn't do so.

- Mr S didn't report the disputed transactions until the bank decided to close his accounts in March 2018, yet Mr S has consistently said he was aware of the fraudulent activity on his account. I find it unusual that he didn't report the issue sooner. I would've expected Mr S to alert NatWest as soon as he discovered the fraudulent activity on his account so that his account could be safeguarded against fraud. I think the only likely explanation is that Mr S knew about and authorised these transactions.

When I weigh everything up, I simply don't find Mr S's explanation plausible. And I'm satisfied that NatWest met the burden to proof required in placing the CIFAS marker against Mr S. I think it more likely than not that he knew rather more about the account activity than he's told the bank or this service. On that basis, I think it's fair that NatWest reported Mr S to CIFAS for misuse of his account. So, I'm not going to ask it to remove the marker.

My final decision

For the reasons I've explained, 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 10 November 2020.

Sharon Kerrison
Ombudsman