

The complaint

Mr K complains that National Westminster Bank Plc unfairly registered a marker against him with Cifas.

What happened

Mr K had a bank account with NatWest which was closed a few years ago. Recently, Mr K became aware that a marker had been lodged against him with Cifas – a fraud prevention service. The marker related to NatWest’s belief that Mr K was involved in moving fraudulent funds using his bank account.

Mr K has denied he was involved in this and explained that he wasn’t aware of the movements of funds through his account. He believes he was also a victim of someone else’s criminal activity.

At the time of the account closure, NatWest identified two large payments paid into Mr K’s account. The receipt of such amounts wasn’t the way that this account was normally operated. These payments were received about two weeks apart and followed a similar pattern. That is as soon as they were received, they were sent to other accounts using Mr K’s online banking access.

NatWest received information that both of these payments were the result of fraudulent activity and because Mr K had received these funds and sent them to other accounts, NatWest closed his account and lodged a Cifas marker against him.

Once Mr K became of the marker, he complained to NatWest about it and asked for it to be removed. NatWest investigated the circumstances of Mr K’s complaint but didn’t change their position and refused to remove the marker.

Unhappy with their response, Mr K brought his complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our investigators who thought it was reasonable for NatWest to have closed Mr K’s account and lodged a marker against him and didn’t uphold his complaint.

Mr K disagreed with the outcome and asked for a further review of his complaint which has now 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.

Mr K has denied any knowledge of these payments into and out of his account. He hasn’t been able to explain how someone could have gained access to his account through his online banking.

Mr K explained that at one stage, he’d given his bank card to someone he knew at college but accepts that this doesn’t give access to online banking. That’s because to gain access to

it requires knowledge of the account and private security information known only to Mr K.

I appreciate Mr K is saying he wasn't aware of them in his account. So, I looked at how the account was normally used, and Mr K was actively using his online banking to move funds prior, between and after the receipt of these payments. The fraudulent payments were significantly larger than the normal account usage and stand out, so his use of online banking to make other payments would have meant he was reviewing his account on a regular basis. There were over a dozen uses of his online banking between the receipt of the two fraudulent payments. So, it seems likely it was Mr K who was using his own account when these payments were received and sent to other accounts.

I don't know for sure if he knew they were fraudulent, but the receipt of such large amounts was highly unusual in Mr K's account and the actions of moving them to different accounts straight after their receipt shows a level of knowledge about the funds and their likely source.

The way the fraudulent funds were received and then moved fits a typical pattern of what is often termed "muling" – that is to distribute fraudulent funds to frustrate efforts to retrieve them and to disguise their origin. In order to lodge a marker with Cifas, NatWest are required to meet certain standards. The relevant ones here are:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted.
- That the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the Subject to the police (but there's no obligation to make that report).

NatWest received confirmation that both payments were the result of fraud, so I'm satisfied they had reasonable grounds to believe that fraud or a financial crime had been committed.

NatWest's information identified the source of the fraud. Mr K's actions when he received and moved the funds points to his knowledge about the payments. I've considered if it was plausible that Mr K was unaware of the situation. If he'd been sent these funds and had no prior knowledge of them, his actions would likely have been different, for example notifying his bank about the payments. That didn't happen here because the fraudulent funds were sent to other accounts using Mr K's online banking as soon as they arrived in his account and that indicates he was aware of them at the time.

NatWest had clear evidence of the fraudulent funds and Mr K's actions when he sent them was enough for NatWest to meet the second criteria, so I think it was reasonable for NatWest to lodge a marker with Cifas.

There's no evidence or plausible explanation to explain how it could have been anyone else but Mr K who used his online banking to move the fraudulent funds. I'm satisfied that NatWest met the appropriate criteria for lodging a marker with Cifas.

Mr K also complained about the closure of his account by NatWest. He believed it was wrong. The account offered by NatWest comes with terms and conditions that Mr K agreed to when he opened it and they govern how it's run, including when it can be closed. Both parties can choose to end their relationship with each other and in this case, NatWest no longer wished to offer banking services to Mr K.

NatWest based this decision on the actions related to the operation of the account and the lodgement of the Cifas marker. They issued a 14-day notice to close the account to Mr K, although the terms would have allowed for an immediate closure based on the evidence

NatWest held. I don't think that it was unreasonable for NatWest to close the account and I won't be asking them to change this.

In summary, I think it likely that Mr K had knowledge of the incoming payments and was involved in the distribution of them from his account using his online banking. I think NatWest met the Cifas standards for lodging a marker against him and their decision to close the account was reasonable.

My final decision

My final decision is that I do not uphold this complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 April 2022.

David Perry
Ombudsman