

The complaint

Mr K complains N26 Bank GmbH unfairly recorded a fraud marker against him on the Cifas database. He asks N26 to remove the marker and for it to clear his name of any wrong doing.

What happened

The facts of this complaint are well known to both parties. In summary:

- Mr K held an account with N26. In June 2019 a payment credited his account from a third party. The payment was later reported as fraudulent by the third party's bank, who contacted N26. N26 investigated the matter and decided to record a misuse of facility Cifas marker against Mr K.
- Mr K complained to N26. He said the payment was for the sale of cryptocurrency and was genuine. N26 rejected his complaint. It said it had fulfilled the CIFAs' criteria to record the marker.
- An investigator at our service decided not to uphold Mr K's complaint. They explained:
 - N26 needed to have reasonable grounds to believe Mr K committed a fraud or other financial crime. And it needed to have clear, relevant and robust evidence that it could confidently report Mr K's conduct to the police. This is the standard of proof Cifas require.
 - The third-party payer had said the reasons for the payment were for very different purposes and not the sale of bitcoin. And, considering the level of information N26 held, there was enough to meet the burden of proof N26 needed for the marker to be recorded.
- Mr K disagreed. He says is not guilty of fraud and bank customers won't tell banks they are paying for bitcoin because banks don't like their customers using their accounts for these purposes and will close them.

Mr K asked for a final decision from an ombudsman, so the complaint was passed to me to decide.

Mr K previously made another complaint about his N26 account being closed and not having access to the funds N26 held. I made a final decision on that complaint, so this complaint does not concern that matter.

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 have decided not to uphold Mr K's complaint. I'll explain why:

- There is a difference between what is required for a firm to record a Cifas marker, to the standard of proof required to convict someone of fraud or another financial crime. N26 do not have to establish Mr K was guilty of fraud beyond a reasonable doubt. Neither does N26 need to have contacted the police for a police investigation to take place.
- Mr K may disagree N26 should be able to record a marker based on a lesser standard of proof. But the lawfulness of fraud prevention agencies and the standard of proof they require of members is a matter for the courts or Parliament to decide. Cifas is a widely used fraud prevention agency used by many banks, and its standard of proof has existed for some time.
- The investigator set out the standard of proof Cifas requires of its members to record a marker. So, I must consider whether the standard of evidence is enough in the circumstances of this complaint for N26 to have recorded the marker. Based on all the information I have seen, I'm satisfied there is enough evidence to show N26 met that standard.
- Mr K says banks are very concerned by customers using their accounts in connection with cryptocurrency trading. Cryptocurrency trading is high risk, so some banks may indeed be concerned by this activity. But what I am concerned with is how this relates to the payment made by the third party in question.
- Mr K says the payment was for the sale of cryptocurrency. He says a friend traded on his behalf on their own account, which is now closed. And he says he personally traded a different kind of cryptocurrency that he held in a e-wallet outside of this relationship. It's clear the payment in question was made directly to him and not via his friend. So, presumably it relates to a sale he made directly to the third party.
- I am not persuaded what Mr K has said is enough on its own to show the payment more likely represented the sale of cryptocurrency. The other information I have reviewed runs contrary to this being the purpose behind the payment to a significant degree.
- I haven't seen evidence to show Mr K's friend held a trading account and traded on Mr K's behalf. And neither have I seen proof of the sale if the payment was made outside of this relationship. Firms won't necessarily delete all trading information related to former customers. So, I'm not persuaded evidence can't have been obtained from the trading platform or Mr K's e-wallet provider to support what he has said.
- When first asked about the payment made by the third party, Mr K said he couldn't remember what it was for. He then referred to it potentially being a personal payment to him or his partner and mentioned "doing some rounds or contributions". But I note he was able to pinpoint other smaller payments made by other third parties at that

time. And I find it unusual Mr K couldn't remember the payment in question considering its size, and he was only able to later recall it was for the sale of cryptocurrency.

- I haven't seen any evidence of communication between Mr K or his friend and the third-party payer. And I would expect there to be some documentary proof of the sale of cryptocurrency. I find its absence telling.

So, for the reasons I have given, I find N26 met the standard of evidence required of it to record a Cifas marker against Mr K. Of course, if Mr K disagrees with my final decision, he is able to reject it. He may wish to complain about the marker to Cifas directly or take the matter to court.

My final decision

I have decided not to uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 June 2021.

Liam King
Ombudsman