

The complaint

Mr V is unhappy N26 Bank GmbH (“N26”) have applied a fraud prevention marker (Cifas) against him.

What happened

Mr V contacted N26 in November 2020 after discovering they had applied a Cifas marker against him. He told them that in November 2019, he was having some financial difficulties when he was introduced to a social media profile by a friend. The profile was asking people to create bank accounts and by doing so would allow the person to make some money to help pay for bills and expenses. Mr V contacted the person running the social media profile and was told to open an N26 account. If he did this, Mr V was told he would make a minimum of £500. After taking some time to think about it, Mr V agreed to open the account. He says he was told to use a specific email address to open the account with and once the account had been set up – he was also told to hand over the card and security credentials for the account – which he did. After this, Mr V told N26 that he was no longer able to access the account and got blocked on social media by the third party. After this, he said he asked N26 to close down the account.

In their response, N26 confirmed they were satisfied the Cifas marker had been applied correctly and wouldn't look to remove it. They said the account had been in receipt of two different sets of fraudulent funds in January 2020 which were then withdrawn/spent straight away via Mr V's debit card. As a result, N26 believed the account had been set up for fraudulent purposes and so it was reasonable to apply a Cifas marker against him for misuse of facility.

Unhappy with N26's response, Mr V then complained to our service. From his complaint form alongside discussions with one of our investigators, Mr V provided a further explanation of what happened.

He confirmed again that he had been experiencing some financial difficulties – but this time, Mr V told our investigator that he had opened the N26 account to help save money. He also told our investigator that he only saw the social media profile a few weeks after the account had already been opened. The profile explained that they could help people make money via forex trading and after talking with his friend he decided to get in touch with the person on social media. He was asked to provide his card and security credentials and when asked by our investigator why he did this, Mr V explained that because he was under huge financial pressure and needed money urgently – coupled with his friend reassuring him that this opportunity was genuine – he was persuaded to do what he was being asked. After giving over his card and security credentials, Mr V confirmed he was blocked by the third party on social media. So he then asked N26 to close the account down. He provided our investigator with screenshots of partial emails to and from N26 in February 2020 to support this.

N26 provided our investigator with evidence which they feel shows they were right to apply the Cifas marker. This included evidence of two separate fraud claims made against the account as well as what details were provided when the account was opened. N26 have

pointed out the email address used to open the account included the term “fraudulent movements”.

Our investigator reviewed what both N26 and Mr V had provided. Their opinion was that they felt N26 were correct to apply the Cifas and didn't recommend it was removed. As Mr V disagreed with our investigator's opinion, the case has been passed to me for a 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.

The marker that N26 has applied is for misuse of facility. The misuse relates to using the account to receive and then spend fraudulent funds. N26 believe the account was set up for this purpose from the outset. For N26 to record this they don't need to be able to prove beyond reasonable doubt that Mr V is guilty of an offence of fraud. But to register a Cifas marker, they're expected to be able to demonstrate that there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted. Practically, what this means is that N26 must first be able to demonstrate that the funds that entered Mr V's account were fraudulent funds – and not part of legitimate activity. And secondly, N26 will need to have robust evidence that Mr V was deliberately dishonest in his activity – including allowing his account to be used for fraudulent activity.

With these considerations in mind, I've firstly thought about the funds themselves which credited Mr V's account. N26 has been able to provide evidence of separate notifications from a third-party bank in January 2020 and March 2020 respectively for payments which credited Mr V's account. On both occasions, the third-party bank explain that their customer has been the victim of a scam in which they were tricked into sending their money to Mr V's account – thinking they had been contacted by their bank and asked to move their funds to a 'safe account' when they were actually contacted by a scammer. Given the amount of detail provided by the third-party bank to N26 – I'm satisfied it's more likely than not the funds which credited Mr V's account were as a result of fraud.

I've then thought about the second element as to whether I believe Mr V was deliberately dishonest to the point that it was reasonable for N26 to escalate its concerns to Cifas. From what I've seen, I'm persuaded that N26 were entitled to do so. This is because:

- My review of Mr V's testimony to both our service and N26 is somewhat different when it comes to the creation of the N26 account itself. For example, when our investigator asked what the purpose of opening the account was, Mr V has explained it was being opened to help budget his money and for savings purposes. However, in his communication with N26, Mr V has explained that he was told to open the N26 account by the third party (who we now know to be a fraudster) as this was needed in order to make 'some money'. Clearly there's some inconsistencies with what Mr V has said about how he came to open the account and so it's now difficult for me to ascertain what happened and reach the conclusion that Mr V genuinely thought he was becoming involved in trading activity. Given what Mr V has told N26 at the time of making his complaint, it seems more likely to me that Mr V was told to open the account by the fraudster and subsequently hand over the card and security credentials to facilitate the fraudulent activity.
- From Mr V's version of events, he has explained he handed over the card and security credentials in and around November 2019. He's also explained that shortly

after this, he was blocked by the third party, so he got in contact with N26 to ask for the account to be closed. However, from Mr V's screenshots – it doesn't appear he's asked for his account to be closed until February 2020 – around three months since the account had been opened by Mr V. I also note that the evidence Mr V has provided suggests the request wasn't made until several weeks after the account had been used to receive and spent fraudulent funds. Given further inconsistencies here between what Mr V has said and what the evidence shows, I think this increases the likelihood that Mr V knew the account was being used for fraudulent purposes.

- Having reviewed the account application, the email address used to set up the account (which Mr V has said he was also told to set up by the third party in his complaint to N26) includes the phrase "fraudulent movements" which is a clear reference to fraudulent behaviour. However, Mr V doesn't appear to question this at all and is an indication that this email address was being set up purely with the intention of it being used to conduct fraudulent behaviour.
- Whilst I understand Mr V has said he was struggling a lot with his finances and the third party promised to make him money – I've yet to see any persuasive evidence which supports his version of events. I appreciate Mr V has provided some screenshots of text messages between him and a third party which he's sent to both our service and N26, but all these really show is that Mr V willingly gave over some security credentials such as a PIN which has then allowed his account to be used for fraudulent purposes. There's nothing within the messages or any other evidence that I've seen which supports Mr V's version of events that he was essentially tricked into handing all these things over or that the account would be used for trading purposes.
- I'm also not persuaded by Mr V's explanation for why he handed over the card and security credentials in the first place – especially in the context that the third party would be making money for him via Forex trading. I'm unable to think of a reason why a third party would've need Mr V's card, PIN and security credentials in order to carry out what Mr V has said. I also cannot think of a reason as to how Mr V thought he could earn profits from a forex trade without investing money into it at first. And whilst I appreciate Mr V has said he gave these things away out of financial desperation – I'm still persuaded that it's highly unusual to hand over these things without any challenge or justification as to why this was all needed.

Taking the above into account, I'm persuaded, on balance, that N26 had enough evidence to meet the burden of proof required by Cifas to add the marker against Mr V. This is because I'm satisfied there's enough evidence to say the money sent to Mr V's account and immediately spent was most likely because of fraud. In addition to this, I'm persuaded on balance that the account was set up for the purpose of fraudulent activity. I don't find Mr V's explanation about the account being used for forex trading plausible on this occasion. This is because there is no other persuasive evidence to support this scenario aside from Mr V's own testimony. And given that his testimony to N26 and our service about what happened is inconsistent – I'm unable to put as much weight on this. Therefore, given the remaining evidence which I addressed earlier, I believe it's more likely than not that the account was being used for something untoward. And ultimately, I'm also persuaded that Mr V helped to facilitate this and therefore acted dishonestly with N26. As a result, I don't think it's fair to ask N26 to remove the fraud marker on this occasion.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or

reject my decision before 15 September 2021.

Emly Hanley
Ombudsman