

The complaint

Mr K complains that Nationwide Building Society recorded a marker at CIFAS, the national fraud database.

What happened

Mr K says he was threatened by an individual and he had to allow that person access to his bank account at Nationwide. He wasn't responsible for any fraudulent activity. The marker is affecting his ability to get a full bank account elsewhere.

Nationwide said it received a report that money paid into Mr K's account had been obtained through a scam. It was all quickly withdrawn through cash withdrawals and transfers to an account of Mr K at a different financial business. He had initially told it in April 2020 that he knew nothing about the transactions and was on holiday. When he later complained about the CIFAS marker he said he had been threatened and it told him he would need to go to the police about this but wouldn't be removing the marker.

Our investigator didn't recommend that the complaint be upheld. He said that there was a high bar for adding a CIFAS marker, but he thought that the evidence supported the loading. Here there was fraud taking place and the issue was about Mr K's involvement. Mr K had explained he had been threatened and provided copies of what he said were messages between him and the person who contacted him. On the face of it these were threatening but he noted the following inconsistencies and unusual aspects to this complaint:

- The fraudulently obtained payments of £2,500 each had been recorded as being received on 29 January 2020 and 3 February 2020. Mr K had received a payment of £198 on 27 January 2020 and two payments of £500 on 1 February 2020 he says from the person involved and knew his name. Mr K had transferred £10 of the first payment and £500 of the other payments to his account and the other £500 had been withdrawn. It would be unusual for the fraudster to pay money directly to him in this way which also risked that person being detected. And Mr K didn't seem to have told Nationwide about this.
- Mr K had said he transferred some of the fraudulent money to an account at a different financial business as he was told to and the fraudster had access to that too. Money was taken out from cash machines and as one payment of £900 was over the limit for that, Mr K says he went with the fraudster to do so at a branch having been threatened with a knife. It again was unusual for a fraudster to take this risk. And Mr K had also previously said he had been at home all that day with family.
- Mr K hadn't initially told Nationwide he had been threatened which was an inconsistency.
- The contact details for the numbers Mr K says were used by the fraudster were saved as 'unknown' on his phone which was unusual as he knew the person's name.
- He understood what Mr K said about being threatened but thought it strange he hadn't contacted the police as Nationwide had said he should do.

Mr K didn't agree and wanted his complaint to be reviewed. He said that he would send pictures and as much proof of what happened as he could. He maintained that he had been

threatened and explained the impact of what happened both on his mental health and on his future.

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 been given additional time to provide his information. He said he would do so a month ago having been contacted again by our investigator. Mr K hasn't done so, hasn't asked for any further time and hasn't given any reasons why he couldn't provide the information. So, I have decided it is now fair for me to look at this complaint based on the evidence and comments that I do have.

I need to consider whether the report to CIFAS was made fairly. On this point, Nationwide needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

Our investigator had given factual details about what happened with the payments as I summarised above. I need to decide whether Mr K was a witting participant in what happened and knew or reasonably ought to have known the money was fraudulent. If as he says he was coerced into allowing this to happen then I'd take that into account in assessing his responsibility.

I note in addition to what our investigator has said that Mr K's account with Nationwide had then only recently been opened with the first entry on 21 January 2020. Mr K says he received money from the person who threatened him before the first fraudulent payment. And again, before the second one. Some of this money was transferred to Mr K's other account. I see no reason for someone who was threatening him to pay him like this. And I haven't seen the entries on his other account at the other business to show what happened to the money. Mr K says that this other business had recorded a CIFAS marker and then removed it. I'm not looking at the actions of that business and which may relate to that money being 'second generation' funds that had been moved on. But in any event I don't have evidence to support what he says about that.

Mr K also says that this person came to his house and he gave him his cards and details. He also says he accompanied him to a branch to take out £900. I agree with our investigator that this would have been very risky behaviour for that person who might have been detected. And Mr K then clearly knew him by sight, had contact numbers for him and there was a record of payments from an account that person operated.

Mr K explains that the messages he has sent were screenshots taken at the time before the person called because he'd said he was going to check these had been deleted from his phone. I agree that these are threatening in nature, but I'm not able to verify when these were sent and by whom and if they were genuine.

I similarly note the inconsistencies in what Mr K has said. He has felt able to report all these details to this service but hasn't gone to the police. I don't have anything else to confirm what he had said to help me determine his role in what happened.

I won't be able to say *exactly* what happened and I'm thinking about what is *most likely*. I'm not persuaded on the evidence that Mr K wasn't a witting participant in what happened. He knew his account was being used to pay in this money and couldn't have reasonably thought that this was legitimate. There is a case to think that he had opened his account for this

purpose and that he seemed to benefit from money sent to him in addition to the specific payments reported as fraudulent. He hasn't given a consistent account or reported this to the authorities. He unusually seemed to know a lot about the person he says was involved. It is possible that he originally agreed to get involved and that then when he showed reluctance was threatened. But I don't really have evidence to support that and this isn't what he says happened. I need to consider this complaint on what I do have. And I'm afraid that I find that Mr K is reasonably responsible in these circumstances for what happened on this account.

Nationwide says that it applied the CIFAS marker because Mr K received fraudulent funds into his account. So, I've looked at whether Nationwide was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Nationwide needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr K's account of events and the evidence Nationwide has provided, I'm satisfied that Nationwide had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr K received fraudulent funds into his account and didn't report this to Nationwide at the time.
- He allowed the withdrawal of the funds and so was in control of who had the benefit of this money.
- Nationwide had grounds to believe that Mr K had used fraudulently obtained funds based on the evidence it had.

As a result, I find that Nationwide had a reasonable basis to close his account and to register the CIFAS marker. I know Mr K will be very disappointed when I say that I won't be asking it to do anything further.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 November 2021.

Michael Crewe
Ombudsman