

The complaint

Mr M complains that N26 Bank GmbH recorded information about him with fraud prevention agencies. He feels this is unfair and would like this information removed.

What happened

Mr M had an account with N26. Between 22 July 2019 and 6 August 2019 his current account received several credits totalling just under £3,000. These payments were then rapidly transferred out of the account, to other accounts including accounts in Mr M's name.

Several days later N26 received notification from the sending banks that the payments were the result of fraud. In each report the senders were tricked into believing they were buying flight tickets. They confirmed they'd received a phone call asking them to transfer money for the tickets after they'd clicked an email link. Once the payments had been sent to Mr M's account they were then blocked by the caller. And when they'd contacted the flight companies, they discovered no flights had been booked for them.

After reviewing what happened N26 took the decision to close Mr M's accounts and retain the money in it. They also recorded a marker with the national fraud database, CIFAS.

Mr M says he wasn't aware the money paid into his account was fraudulent. He's said he was contacted by a friend of a friend, Mr S, who'd asked him if he was interested in doing some extra work. Mr M said at the time he was struggling financially and needed the extra cash to take care of his family, so he agreed. He says Mr S explained he was running a travel company and all he had to do was receive payments into his personal account for handling fees for flight tickets, then forward the remainder onto Mr S via a money transfer service. Mr M said he took a small percentage of the funds as payment for handling the transactions.

Mr M says he didn't draw up a contract with Mr S, it was in essence a 'gentleman's agreement' and he dealt with Mr S either via a well-known social messaging site or on the phone. He's since changed mobile phones so no longer has access to many of the messages between him and Mr S.

Mr M has explained he believed Mr S's travel business was legitimate and had raised the issue of it not being ABTA certified with Mr S, but he said it wasn't essential. And that he'd seen Mr S's company website, so believed everything was above board. Mr M says when N26 blocked his account he contacted Mr S who'd assured him the flight tickets had been sent by his company. But looking back on things he now thinks he was naïve and only found about the marker when an account he had with another bank was closed.

Mr M complained to N26. It said it hadn't done anything wrong. It said the terms of Mr M's account allowed them to restrict and then close his account. They also said that in line with Banking regulations they have an obligation to report incidents like this to CIFAS and felt the information they recorded was accurate.

Unhappy that the CIFAS marker would remain Mr M referred the complaint to our service. One of our investigators looked at Mr M's complaint but didn't think N26 had done anything wrong. The investigator explained that to record a marker with CIFAS N26 would have to have reasonable grounds to believe Mr M was involved in fraud or financial crime. She said that the bar for recording a CIFAS marker is a high one. And she'd considered Mr M's explanation of what he'd said had happened, but she didn't think his explanation that he'd unwittingly received the fraudulent funds was plausible. So, she said N26 had acted fairly when it recorded the CIFAS marker.

In response, Mr M said N26 hadn't contacted him at the time to discuss the activity on his account and there wasn't any evidence to show he's knowingly received fraudulent funds. And he provided copies of screen shots of messages between him and Mr S which he says supports his explanation about what he was doing. So, he said N26 hadn't treated him fairly and should remove the marker.

As no agreement could be reached the matter has come to me to decide.

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.

CIFAS marker

Our investigator outlined in detail the level of evidence required for N26 to record a CIFAS marker against Mr M – so I won't repeat it in detail here. But briefly N26 need to be able to demonstrate that there are reasonable grounds to believe that fraud or financial crime has been committed or attempted. And that Mr M was complicit in this fraud or financial crime.

What this means in practice is that N26 must first be able to show that fraudulent funds have entered Mr M's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or *might* be, an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

So, I need to decide whether N26 had sufficient evidence to meet the standard of proof and load a marker against Mr M. Having looked at all the evidence I'm satisfied they have, and I say this because:

- I've seen evidence from N26 that several other banks notified them that money paid into Mr M's account between 22 July 2019 and 6 August 2019, was fraudulent. And his account was used to pass it on.
- Mr M has told us he agreed to receive payments on behalf of Mr S into his N26 account, which he believed related to travel tickets. But he's provided quite patchy evidence to support this explanation – namely a handful of screenshots of messages that he says are between him and Mr S. But he's not provided a contract of employment, what percentage he'd take from each transaction (or how this was calculated), or any communication between his friend which led to the arrangement with Mr S. I find its absence telling.
- Mr M also hasn't provided a plausible explanation for why he sent the money onto
- Mr M used a money exchange transfer service instead of sending the money directly to Mr S's company or an account operated by him. He hasn't provided much in the way of an explanation why the funds needed to be moved in this way or for why Mr S needed to use his account at all in the first place. I'd expect Mr M to be suspicious considering he'd not been provided with a legitimate or plausible explanation for why

Mr S's business needed to use his personal N26 account. So, I can't rule out the possibility that Mr M and Mr S were looking to conceal the nature of the transactions from any account monitoring systems.

- I've looked at the screen shots Mr M has provided. They simply show Mr M and Mr S discussed what payments Mr M was due to receive – they don't show Mr M wasn't an unwitting beneficiary. Rather I think it most likely that Mr M had reason to believe that the money paid into his account wasn't legitimate from the outset. I say this because Mr M hasn't provided any evidence to show what was being provided for the money paid into his account such as details of holiday packages or flight tickets.
- Mr M opened his N26 account on 12 July 2019. As far as I can see the account wasn't used very much at all prior to the fraudulent funds being paid into the account and being moved. I note too that Mr M didn't respond to N26's letter, or question why his account was being closed, which would make sense if he intended to use the accounts for genuine purposes. And he only did so when he discovered the CIFAS marker.
- When N26 closed Mr M's account it had a balance of just over £800 – I find it odd, given what Mr M has said about his financial difficulties at the time, that he didn't contact N26 to gain access to the money. Especially if as he says he genuinely believed everything was above board and he wasn't doing anything untoward. This suggests to me that Mr M more likely than not did in fact open the account in order to act as a money mule.
- Mr M has said that N26 should have spoken to him at the time about how he was operating his account. I agree it would've been helpful if N26 had contacted Mr M at the time – but he's since had the opportunity to put forward his explanation. Therefore, I don't think this changes the conclusion I've reached.

In summary, for the reasons, I've explained, I'm satisfied that N26 had grounds to believe that Mr M was in the dispersal of fraudulently obtained funds based on the evidence it had. I So, I think it was fair for N26 to register the CIFAS marker.

Customer service

Mr M has also complained about the service he received from N26. Namely that N26's final response letter was addressed to someone other than him. I can see N26 have accepted that their service wasn't up to standard and apologised. It has explained that it made an administrative error. The content of the letter is accurate and reflects the complaint relating to Mr M. I can't see that Mr M has been caused any detriment. So, I think this is a reasonable way to resolve this aspect of Mr M's complaint.

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 M to accept or reject my decision before 3 December 2021.

Sharon Kerrison
Ombudsman