

The complaint

Mr L complains that N26 Bank GmbH closed his account and registered his details with CIFAS the UK's fraud alert service. He wants the CIFAS marker removed and compensation.

What happened

Mr L had an account with N26 which he opened on 11 April 2019.

On 28 April 2019 Mr L received two £250.00 credits into his account from the same source. The next day he carried out two ATM withdrawals for £250.00 each.

N26 closed Mr L's account and loaded a CIFAS marker against him.

Mr L realised something was wrong when he was declined for credit and one of his bank accounts was closed.

N26 has said Mr L received fraudulent funds into his account not long after he opened it.

Mr L complained to N26, they didn't uphold the complaint. They said they had information that confirmed the money paid into Mr L's account was fraudulent. And they had correctly applied the CIFAS marker.

Mr L also complained to CIFAS who also declined to remove the CIFAS marker.

Mr L said he had borrowed money from a friend at work to help with his accommodation costs and he hadn't been aware that the funds were fraudulent.

Mr L complained to our service. One of our investigators looked into the complaint. She said she thought that N26 had correctly applied the CIFAS marker.

Mr L was unhappy with her response he said she hadn't listened to the information he had provided. He was an innocent victim. He didn't have contact with his friend anymore. He reiterated his position – he had borrowed money from a friend because he was short of cash and was going to pay him back after he received his student loan.

As there was no agreement 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

The marker that N26 have filed with CIFAS is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr L was guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- “There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]
- The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr L's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr L was *deliberately dishonest* in receiving the fraudulent funds and knew they were, or might be, illegitimate payments.

However, a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show *deliberate complicity*.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I need to assess whether I think there is sufficient evidence to meet this standard of proof – and therefore, whether N26 acted fairly in loading a CIFAS marker against Mr L.

For H26 to have fairly loaded a CIFAS marker against Mr L they need to have evidence to show that Mr L's account received fraudulent funds. I'm satisfied based on the information provided by N26 they've sufficient evidence that the funds paid into Mr L's account on 28 April 2019 were fraudulent. I'm therefore satisfied that N26 met the first pillar to load a marker.

But this isn't sufficient on its own for N26 to load a marker, I need to be satisfied Mr L was complicit in the fraud, so in summary was *deliberately dishonest* and knew the funds were fraudulent. So, I've moved on to consider this.

Looking at the information before me I think it's more likely than not Mr L was complicit. I say this because:

- The account was opened three weeks before the fraudulent funds were received, and no other transactions were made on the account.
- The two ATM transactions were made within 24 hours of receipt of the fraudulent funds. which is what I'd expect to see if fraudulent funds were deposited/transferred into an account.
- The lack of activity on the account apart from the payment in of fraudulent funds and the withdrawal of them shortly afterwards is also what I'd expect to see.
- The funds were paid into the account in two equal payments and the funds were withdrawn in two equal payments. This is strange as Mr L has said that he borrowed £500 – I would have expected him to receive one payment of £500. Especially as both payments come from one source.
- Mr L has said he used the money for everyday expenses and to pay back some money he owed a third party. Because of this I would have expected to see a transfer

to another one of his accounts or alternatively to see these payments come out of his N26 account but not to see two ATM payments for £250 each.

- Mr L originally told us he borrowed the money because his rent was due, and he was short of money. Later he told us he needed the money for expenses and to pay someone back.
- Although Mr L has provided a snapchat conversation with his friend who he borrowed the money from, it is not possible to verify these as genuine conversations.
- The screenshots Mr L has provided simply show Mr L and M discussing the payments Mr L was requesting and M was going to send to his account- they don't show Mr L was an unwitting beneficiary.
- Mr L has told us his friend's name, who I will refer to as M. Despite Mr L saying he had borrowed the money from M, the money Mr L received into his account wasn't received from M.
- Mr L didn't query the different name that the funds were received from – this is not the behaviour of an innocent recipient of fraudulent funds.
- Mr L says that he repaid the funds back to M in cash from tips he made working in the hospitality industry. He has also said he withdrew £180 in cash to pay M back.
- Mr L has said he contacted M after he realised he had a CIFAS marker registered against him. However, Mr L hasn't been able to provide evidence of this contact.
- I find it implausible that Mr L would go out of his way to physically save the snapchat conversations he had arranging the loan with M but no other conversations with M; for example arranging to meet to return the money or contacting him after Mr L realised the CIFAS marker was registered against him.

In summary the information Mr L provided us is inconsistent and what happened is unclear. In respect of returning the money Mr L's story seems to have changed during the investigation. In addition, the way the account was used and Mr L's lack of concern that the money he received into his account wasn't from M makes me conclude it's more likely than not that Mr L was complicit in the receipt and dispersal of fraudulent funds.

It follows I don't think N26 did anything wrong when they loaded a CIFAS marker against his name and I won't be asking them to remove it.

My final decision

For the reasons mentioned above I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 January 2022.

Esperanza Fuentes
Ombudsman