

The complaint

Mr I has complained that National Westminster Bank Plc (NatWest) registered a marker against him at CIFAS, the national fraud prevention agency.

What happened

In early 2017, Mr I's NatWest account received a large sum of money, which was then withdrawn in cash or spent in large amounts on consumer goods.

NatWest received notification that the funds were proceeds of fraud. They closed Mr I's account and registered a marker at CIFAS. Mr I was a minor at the time.

Initially, Mr I told NatWest that his wallet had been stolen with his card and PIN, and he'd been unaware of how his account was used. But NatWest said it would not have been possible to have carried out the fraud with just Mr I's card and PIN – for example, other details were needed to transfer the money into his account in the first place.

Mr I complained in late 2017, and in early 2018 NatWest confirmed that it would not remove the marker.

In 2021, Mr I complained again. He explained that he'd made up his previous story as he'd been afraid to tell the truth to his parents. And the matter had made him feel so sick he'd not been able to deal with it in the intervening time. He provided evidence from his doctor that he'd been signed off work for months due to his mental health.

Mr I explained that he'd been approached in the street by a man with a child, who asked for help. The man said he was unable to open a UK account and couldn't use cash machines because of foreign fees. But he needed someone to help him pay for things for his child.

Mr I says the man built a rapport with him, flattered him, kept emphasising this was for his child, and so convinced Mr I to help. Mr I agreed to let the man transfer money into his account. Then on the man's instructions, he either withdrew the money in cash and gave it to the man, or spent it on goods for the man's family. Mr I said that as it went on he felt uncomfortable, but just wanted to get it done with. He said he didn't know the money had come from any fraud – the man had assured him the money had come from a business he owned abroad, and had convinced him it was all legitimate. Mr I explained he was only a minor himself, who was just trying to help. Mr I provided a copy of the text conversations he'd had with the man before the man blocked him.

Our investigator looked into things independently and didn't uphold the complaint. Mr I didn't agree, so the complaint was passed to me to decide.

I sent Mr I and NatWest a provisional decision on 27 October 2021, to explain why I thought the complaint should be upheld. In that decision, I said:

First, I note NatWest mentioned that Mr I did not bring his complaint within six months of its original final response letter in 2018. But I can see that NatWest reinvestigated the case and issued a new final response letter in April 2021. In that letter, NatWest made new points and gave Mr I new referral rights, telling him he had six months from the date of that letter to come to our service. I think the second final response letter implicitly withdrew the first, and so Mr I had six months from April 2021 to bring his complaint to our service. He brought his complaint to us that same month, which was within the six-month period. I think Mr I brought this complaint to us in time.

In terms of the substance of the complaint, I need to consider whether this report to CIFAS was made fairly and whether it should remain. On this point, NatWest needed to have reasonable grounds to believe that Mr I had knowingly and willingly taken part in the fraud. This had to go beyond just a suspicion or concern, with appropriate supporting evidence.

Based on what I've seen so far, I think NatWest had reasonable grounds to add the marker. But I think that, given the new evidence that's come to light, the marker should now be removed. I'll explain my reasons.

Mr I has sent us records of his text conversations with the fraudster. He sent them in the form of pictures taken of his phone from another device, rather than screenshots that could have been more easily doctored. I find this evidence to be particularly persuasive. These pictures strongly substantiate what Mr I said he was told. For example, I can see where the fraudster reiterated that the money was for his child, confirmed it was legitimate and came from his business, gave Mr I instructions to withdraw cash and give it to him, and so on.

Further, the reference on the payment Mr I received also matches the type of business the fraudster said he owned, which I imagine made things that much more convincing.

I find Mr I's latest testimony to be broadly plausible. He was only a minor at the time, and I can see how he might have been taken in – not least as he would not have been experienced in financial matters and would not have necessarily known to question things more deeply than he did. Indeed, many adults are taken in by less sophisticated scams than this one.

There was only a very small (and rather insignificant) amount left over in Mr I's account from the fraudulent funds, so I'm not confident that he really benefitted from this matter. And this bank account appears to have been genuine – receiving Mr I's wages and being used for his own spending before and after the fraud.

So I am not currently satisfied that Mr I knowingly and willingly took part in the fraud. I think it's more likely that he was deceived into helping the fraudster unwittingly. And so I think the CIFAS marker should be removed.

Mr I has candidly detailed the stress and anguish that this situation has caused him – such as its effects on his mental and physical health, its effects on his ability to study or work, and the troubles he's faced in getting a bank account. And so understandably, he's asked for compensation from NatWest.

The issue here is that I think it's primarily the fraudster who is responsible for what happened here, rather than NatWest. Indeed, I think NatWest acted reasonably based on what they knew at the time.

I can understand why, at his age and under pressure, Mr I created his initial story about losing his card and PIN. But in doing so, it meant that NatWest were in a situation where:

- they had solid evidence that their customer had received and sent on fraudulent money;*
- they had solid evidence that the transactions would need to have happened with their customer's consent; and-*
- their customer had given them a clearly false version of events.*

Based on those facts, NatWest had reasonable grounds to believe that Mr I had knowingly and willingly taken part in the fraud. And they had the appropriate evidence to support such a conclusion, taking things beyond just a suspicion or concern. At the time, they did not have Mr I's latest testimony, nor the evidence he's provided to our service to support it.

So I think NatWest acted reasonably in adding the CIFAS marker, based on the information they had at the time – even if I think it should now be removed in light of the new evidence. I can also understand why NatWest – and our investigator – were hesitant to remove the CIFAS marker later, given how contradictory Mr I's testimony had been.

So in light of the above, I do not think I can fairly tell NatWest to pay Mr I compensation here.

There is one aspect where I think NatWest can reasonably help further, though. I understand that Mr I has applied for accounts and been turned down due to the CIFAS marker. I also understand that some of these applications left hard searches on his credit file, which may be looked at negatively. So in addition to removing the CIFAS marker, I think NatWest should provide Mr I with a letter stating that the marker was erroneous. That way, Mr I can present such a letter to the firms who turned him down. He can then ask them if they would remove the searches from his credit file if their rejection was due to a CIFAS marker that shouldn't have been there – or perhaps to even reconsider their rejection. This may help Mr I to piece things back together after everything that's happened.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 24 November 2021. Mr I let us know he was satisfied with the provisional decision, and neither party sent me any new evidence or arguments to consider.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before.

Putting things right

I direct National Westminster Bank Plc to:

- Remove the CIFAS marker in dispute, along with any related fraud markers (if applicable); and-
- Provide Mr I with a letter stating that the fraud marker was erroneous.

My final decision

I uphold Mr I's complaint and direct National Westminster Bank Plc to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 5 January 2022.

Adam Charles
Ombudsman