

The complaint

Miss R complains that N26 Bank GmbH recorded information about her with fraud prevention agencies. She says this is unfair and would like this information removed.

What happened

Miss R opened an account with N26 in February 2020.

Between 26 February 2020 and 4 March 2020 three payments totalling £950 were paid into Miss R's account. The money was transferred quickly out of the account soon after they'd been received to other accounts.

N26 received notifications from the sending banks that the three payments paid into Miss R's account were the result of an investment scam orchestrated on social media. The scam involved victims being told about an investment opportunity where after sending funds they would receive a large return. After agreeing to the investments, the victims were asked to send funds to Miss R's N26 account but received no contact once they'd sent the payments.

N26 blocked Miss R's account on 4 March 2020. And after reviewing what happened took the decision to close Miss R's account. They also recorded a marker with the national fraud database, CIFAS.

Miss R says she wasn't aware the money paid into her account was fraudulent. She's said that she never made any of the transactions out of her account and that she'd allowed a trusted friend, I will refer to as K, to use her account for trading. Miss R says she knew K from school and during a night out he told her she should 'get into trading' and gave her his contact details.

Miss R says that following her initial conversation, she and K spoke over the phone and via a social media platform and he convinced her to join a trading platform. Miss R says K told her he needed a 'special account' to trade and that he'd manage everything. And that she'd receive a share from the trading. So, she opened the N26 account and gave K all her online banking details, log in information, and access to her email account. And that she was told by K not to log into the account. Miss K also forwarded any codes N26 sent to her mobile phone onto K to facilitate the transaction on her account. So, Miss R says K had full access and control over the account.

Miss R says she had no idea her account was being used to receive and disperse fraudulent funds and only became aware N26 had recorded a CIFAS marker against her name in June 2020 when accounts she had with other banks were closed. And when she tried to find out why this had happened, she found out the marker had caused the closures.

Miss R complained to N26. She said she wasn't able to open another bank account due to the marker which made it very difficult for her to receive her wages, student loan and pay her bills including her rent. Miss R said she'd been naïve and believed she'd been the victim of fraud. N26 said it hadn't done anything wrong. And that in line with banking regulations they

had an obligation to report incidents like this to CIFAS. N26 also said Miss R hadn't raised a fraud claim with on any occasions she'd been speaking to them via its in app chat facility.

Unhappy that the CIFAS marker would remain Miss R referred her complaint to our service. One of our investigators looked at Miss R's complaint and asked her some more questions about what had happened in particular whether Miss R had any evidence to support her explanation. Miss R sent the investigator a screen shot of a chat between her and K, which shows K telling her not to log into the N26 account. But she didn't have anything to show any of the initial conversations about the trading opportunity or any subsequent communications after she'd discovered what had happened. Miss R said she hadn't reported anything to the police, and she had tried to contact K, but he had blocked her from contacting him.

The investigator explained that to record a marker with CIFAS N26 would have to have reasonable grounds to believe Miss R 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 Miss R's explanation of what she'd said had happened, but she didn't think her explanation was plausible. So, she said N26 had acted fairly when it recorded the CIFAS marker.

Miss R disagreed. She says she's a victim too and N26 should remove the marker. She explained that she hadn't made any of the transactions on the account – it was K. And she hadn't contacted N26 at all – it was all K.

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.

The investigator outlined in detail the level of evidence required for N26 to record a CIFAS marker against Miss R – 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 Miss R 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 Miss R'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 Miss R. Having looked at all the evidence I'm satisfied they have, and I say this because:

- I've seen evidence from N26 that other banks notified them that the three payments paid into Miss R's account on 26, 28 February 2020 and 4 March 2020 were fraudulent. And that Miss R's account, was used to pass them on – the money was transferred out to third party accounts soon after being received.
- Miss R says she was naïve and was duped by K into allowing him to use her N26 account. She says she knows nothing about the fraudulent funds and was unwitting. And it wasn't her who moved the fraudulent funds out of her account or spoke to N26 via its in app chat. But this isn't supported by evidence provided by N26.
- On 3 March 2020, screen shots of N26 in app chats shows that someone purporting to be Miss R contacted N26 to block the account and card. Its' not clear to me why

this was request was made, but I think it's unlikely that K, would seek to try and block an account he was using for fraudulent purposes as he wouldn't be able to gain access to any funds paid into the account.

- Miss R has said she wasn't accessing her account – she says K had taken it over. But this is contradicted by evidence provided by N26. I say this because on 4 March 2020, the day the fraudulent payment of £500 was paid into Miss R's account an in app chat took place between someone purporting to be Miss R and N26.
- At 4.20pm Miss R told N26 that she was expecting a payment and questioned why it hadn't landed in her account. During this chat Miss R said she couldn't transfer money out of her account or withdraw any funds. N26 asked Miss R to verify herself by providing details of the document used to set up the account. Miss R provided her driving licence number and N26 then told her the account was under review.
- Miss R hasn't provided any explanation for how, if as she's suggested this was K impersonating her, that he would've been aware Miss R had used her driving licence to open her account. And she hasn't said she provided K or anyone else with her driving licence number. I think it's unlikely that K or an unknown third party would be able to correctly guess these details. So, I think it's likely that it was Miss R speaking to N26 on 4 March 2020 about the difficulties she was having with operating her account.
- It follows then that I think it's likely she was checking her account, was aware of the account activity, and that there was money in the account which she was trying to move on. And that they'd been earlier payments into and out of the account which would've been displayed when looking at the account activity. At this point three fraudulent payments had credited her account. All of which were referenced 'family business' and made no reference to trading at all.
- Miss R hasn't provided any detailed evidence of the arrangement regarding trading that she says she'd agreed with K – such as how much she would gain, how long the arrangement was to be in place, and how the trades were to be funded. I find it odd too that Miss R was expecting to profit from an arrangement she hadn't made any contribution towards and didn't question whose money was going to be used.
- She also hasn't explained why she needed to be involved at all or why the money needed to come through *her* bank account. And that when it did, she would pass it on – as she attempted to do on 4 March 2020.
- Miss R says she didn't know the money paid into her account was fraudulent. So, I've considered whether Miss R knew or ought to have known these funds weren't legitimate. And whether she could have protected herself from being involved.
- Miss R doesn't have any evidence, such as messages on the social media platform that she exchanged with K about what the arrangement she agreed to was. I've looked at the screenshots she has supplied, and I don't find they show she wasn't complicit and an unwitting beneficiary of fraudulent funds. Based on the information she has provided, she didn't really know K very well, only knew him to say, 'hi to' and hasn't provided any evidence of her attempting to contact him once she realised what had happened with her account. So, she hasn't been able to explain, why K would arrange for £950 to be paid into her account and passed on.
- If Miss R hadn't consented to the transactions and had no knowledge of the fraudulent activity on her account, I think it's reasonable to expect her to alert N26 and put her explanation forward at the time. But she didn't do so. It appears Miss R only contacted N26 once she discovered the CIFAS marker.

In summary, when I weigh everything up, I'm not persuaded by Miss R's version of events. I'm satisfied that Miss R didn't take reasonable steps to establish that this money was legitimate. She allowed her bank account to be used to receive and pass on fraudulently obtained money with a view to her making money from this. And I find she ought reasonably

to have known that this wasn't legitimate, and she hasn't been able to provide sufficient evidence of why she thought it was.

For the reasons, I've explained, I'm satisfied that N26 had grounds to believe that Miss R was involved in the dispersal of fraudulently obtained funds based on the evidence it had. So, I think it was fair for N26 to register the CIFAS marker and whilst I appreciate what Miss R says about the impact that the marker is now having on her, I won't be asking them to remove it.

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 Miss R to accept or reject my decision before 11 February 2022.

Ombudsman