

## The complaint

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

## What happened

In April 2017 Mr S disputed four payments that had been made online from his account to a betting company in December 2016. The total of £5,000 was refunded to him and he withdrew the money. He was unhappy to find that this account was still open and that the marker had been registered. He is seriously ill and can't obtain an account elsewhere.

Nationwide said it had added the marker because Mr S had made a false claim. The IP address used for the online payments matched the one he used for online banking and he had a pattern of spend to this merchant. It ought to have closed his account at the time and had now done so.

Our investigator didn't recommend that the complaint be upheld. Mr S had said that a relative staying with him had made these payments. He noted that it had taken several months for the claim to be made. Mr S had made payments to the same merchant that he didn't dispute before and after the ones here. The IP address matched one he'd used for genuine payments. Nationwide had decided to refund the money on a temporary basis while it investigated things. The fact that it hadn't tried to collect the money back from Mr S was its decision. Our investigator thought that Mr S was complicit in these payments and that the high bar for adding a CIFAS marker had been met.

Mr S didn't agree and wanted his complaint to be reviewed.

## 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.

I need to take account of the Payment Services Regulations 2009. And to think about whether Mr S authorised the payments from his account. That's more than the payments being authenticated but would require him to consent to them. If he didn't authorise them then generally Nationwide wouldn't be able to hold him responsible for them.

I also 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.

The information shows that these payments were authenticated with Mr S' account details. The issue is whether he consented to them. I'm thinking about what is *most likely*. I note that he had an account with the betting company and was regularly using it for similar payments. There is nothing to distinguish the payments in dispute from the genuine ones. And these disputed payments were made from the same IP address he used for online banking. I

appreciate he says a relative used his account. But I find here it most likely that he was complicit in the way these payments were made. And I take into account that despite what he claims as a significant and immediately visible loss he did nothing to report this for several months.

Having made that finding I'm satisfied that he didn't have a genuine basis to dispute the payments. He received a temporary refund which was withdrawn. The case notes provided by Nationwide indicate that he was told that his claim would be rejected in May 2017 and his account would be closed. He was to go to a branch about other funds. For reasons which aren't clear the account wasn't closed, and he wasn't pursued for this money. Nationwide doesn't accept that this was because it had reached a different view about his claim. And it accepts the account should have been closed when the CIFAS marker was added.

Nationwide says that it applied the CIFAS marker because Mr S 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 it 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 S' account of events and the evidence Nationwide has provided, I'm satisfied that it had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr S received fraudulently obtained funds into his account following his claim for a refund.
- He authorised 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 S had used fraudulently obtained funds based on the evidence it had.

I appreciate what Mr S says about his personal circumstances. And so, I know he'll be very disappointed when I say that I won't be requiring Nationwide 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 S to accept or reject my decision before 25 May 2022.

Michael Crewe

**Ombudsman**