

## **The complaint**

Miss A complains N26 Bank GmbH unfairly recorded a Cifas marker against her on the national fraud database. She wants the marker removed.

## **What happened**

Our investigator stated the background facts that led to Miss A's complaint in their view. I find no need to repeat everything they said here. But in summary, Miss A opened an account with N26 in 2019. She says she opened the account to sell personal items to help fund her move to a new property, and she advertised them on a well-known social media marketplace.

Shortly after opening her account Miss A received a payment. N26 were contacted by the payer's bank to report the payment as fraud. N26 closed her account immediately and recorded a misuse of facility marker with Cifas.

Miss A discovered the marker in 2020 after making a subject access request to Cifas. This followed an unsuccessful credit card application. She complained to N26 and said the marker was unfair. She said the payer had raised a false claim to get the item for free.

N26 said they fairly recorded the marker. Unhappy with their response, Miss A brought her complaint to our service.

Miss A has told our service about medical conditions she has, as well as her having a prior addiction to online gambling. She says these are relevant factors to explain how she used her account and what she remembered about the payment in question.

Our investigator decided not to uphold the complaint. In summary, they found:

- N26 recorded a misuse of facility Cifas marker against Miss A. To do so, they didn't need to prove Miss A was guilty of a financial crime. But they still needed to have reasonable grounds to believe that she was, and there needed to be enough clear, relevant, and rigorous evidence for them to confidently report her to the police. This is the standard of proof Cifas require.
- Miss A said the payment in question was for the sale of a personal item. But the payment reference referred to "driver support". It was unlikely the payer would put this as a reference if they were paying for the item Miss A says she sold.
- Miss A initially said she quickly withdrew payments made into her account. This was because not having funds in her account reduced the risk of her using those funds to gamble. But the evidence showed she didn't withdraw the payment, but instead she sent the payments to an account belonging to someone else.

After revealing this to Miss A, her version of events changed to saying she first paid

the funds to a friend and they went together to withdraw the funds. This was because she had yet to be issued a debit card by N26. She said her friend accompanied her because she felt unable to withdraw funds alone due to how a medical condition affected her. Miss A also has another medical condition which she says explains why she didn't fully remember what had happened before, but this wasn't persuasive enough to explain the different versions of events she had given.

- Miss A said she couldn't provide proof of selling goods because she had deactivated her social media account and couldn't reactivate it because she couldn't access the email account it was connected to. But it was unlikely she would have had no evidence to demonstrate the sales she says she made.
- Cifas reviewed whether the marker was properly recorded and confirmed it was.

Miss A disagreed with the outcome the investigator reached. In summary she said:

- She has never been suspected of wrongdoing by any other bank, and she would not risk her career, prior educational efforts, and integrity, by committing fraud.
- She never thought she needed to retain evidence of the sales but had N26 asked her questions about the payment before recording the marker she could have provided screenshots and evidence of her communication with the buyer.
- She can't now provide further evidence as she can't access her old email account to reactivate her social media account. Her mobile phone number has changed so she can't use two-factor authentication.
- The buyer intended to defraud her, so they purposely put a strange payment reference which conflicted with the description of what they had bought. She never saw the reference before she withdrew the funds and would have confronted the buyer had she seen it.
- She feels she is being penalised and discriminated against because her medical condition affected her memory of what happened several years ago.
- It's very unfair that N26 don't have to prove beyond reasonable doubt that she was guilty of fraud.

Miss A asked for a final decision from an ombudsman, so her complaint has been given 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.

I've decided to not uphold Miss A's complaint. I want Miss A to know I have listened to everything she has said, and I have referred to her points where relevant.

There is a difference between what a firm like N26 must establish to record a Cifas marker, to the standard needed to convict someone of fraud or another financial crime. N26 do not have to establish Miss A was guilty of fraud or a financial crime beyond a reasonable doubt. Neither do they need to have contacted the police for them to have carried out a criminal investigation.

Miss A disagrees N26 should be able to record a marker based on a lesser standard of proof. But the rightfulness of fraud prevention agencies and the standard of proof they require of members is a matter for the courts or Parliament to consider. Cifas is a widely used fraud prevention agency and its standard of proof has existed for some time. So, my role here is not to consider the rightfulness of firms being able to record fraud markers based on a lesser evidential standard than that required by a criminal court of law.

The investigator set out the standard of proof Cifas requires of its members to record a marker. So, I must consider whether the standard of evidence is enough in the circumstances of this complaint for the marker to remain. Based on all the information I have; I'm satisfied Cifas' evidential standard has been met.

Firstly, I must be clear that I can't know for certain what happened in relation to the payment which was reported as fraud. So, when facts are less clear, I need to draw conclusions based on what I think is more likely than not to have happened. And, one of the factors I need to account for is how credible and persuasive Miss A's explanation for what happened is when weighed against the other information and evidence available to me.

Miss A says she deleted her social media account and can't access her old email account. It's possible that this is true. But I must also consider that the reason why Miss A can't provide evidence to verify what she has said is because the payment she received did not represent the sale of an item she owned.

Miss A says the buyer probably used the conflicting payment reference because they intended to defraud her. I have weighed what she said against the other information which informed N26's decision to record a marker, along with the fraud report. And, based on what I have seen, I find it's unlikely the payer's reference was done to defraud Miss A. N26 could have contacted Miss A before recording the Cifas marker. But, even if they had, based on the persuasiveness of the information I have seen, I doubt she would have been able to present compelling evidence that she did sell the item to the payer.

Miss A says her version of events changed because of how one of her medical conditions affects her memory. I have reviewed the medical evidence she presented, and it shows her condition impacts her working memory. The evidence does not discuss how her long-term memory is affected, but I acknowledge it's possible that her long-term memory is affected to the extent that she initially failed to recall sending funds to her friend. But whether or not Miss A accompanied her friend to withdraw the funds from her friend's account doesn't establish that the payment she received was for the sale of a personal item. Instead, I find the evidence I have seen weighs against this being the case.

N26 said they received the report from the payer's bank in 2020 in their final response letter to Miss A, which of course would have been some time after her account was closed. This is clearly an error, as the report was received in 2019 when Miss A's account was open. I understand why this would be concerning for Miss A. But I am not persuaded this shows N26 didn't have sufficient information to record the Cifas marker. I find they did. I also don't find the fact that no other bank has recorded a marker against Miss A shows N26 acted unfairly- I find their decision was based on the evidence and information they held.

N26 no longer provides services in the United Kingdom. But I don't find this is a relevant reason to direct them to remove the Cifas marker. A Cifas marker and how long it lasts is not contingent on a firm continuing to provide services into the United Kingdom after it's recorded.

On balance, I find N26 had reasonable grounds to believe Miss A was knowingly involved in a fraud or financial crime, and there was enough evidence for them to have confidently reported her conduct to the police. So, I find N26 met the evidential standard set out by Cifas, and I am not going to tell them to remove the Cifas marker. I also find N26 were entitled to close Mr E's account immediately given their concerns.

**My final decision**

I have decided not to uphold Miss A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 7 June 2022.

Liam King  
**Ombudsman**