

The complaint

Miss K has complained that National Westminster Bank Plc (NatWest) registered a marker against her at CIFAS, the national fraud database.

What happened

In December 2019, Miss K's account was used to receive and pay on some funds. NatWest says this involved some kind of fraud in some way. It closed Miss K's account and registered a marker against her at CIFAS. Miss K was a minor at the time.

Miss K discovered the CIFAS marker after having trouble getting or keeping a new account. She complained. She explained a purse of hers had been stolen. In it was her card, and a sticky note with her PIN and security details on it, which she kept as she was forgetful. She says by the time she noticed it was missing and spoke to NatWest, they'd blocked her account and wouldn't help her.

Our adjudicator looked into things independently. They asked NatWest for more details on why it had accused Miss K of fraud, but NatWest refused to provide this. They upheld the complaint, recommending that the marker be removed.

NatWest didn't agree, so the complaint's been passed to me to decide.

I sent NatWest and Miss K a provisional decision on 26 April 2022, to explain why I thought the complaint should be upheld. In that decision, I said:

I need to consider whether this report to CIFAS was made fairly. On this point, NatWest needed to have more than just a suspicion or concern. It needs to be able to show that it had reasonable grounds to believe that fraud or a financial crime had been committed or attempted by Miss K, backed up by evidence rigorous enough that it would support this being reported to the authorities.

Based on what I've seen so far, I cannot fairly conclude that this marker should remain.

NatWest has not provided any evidence to show how these payments were authenticated or to show that Miss K reasonably knew about them or consented to them. And there is a clear way that someone could have got hold of Miss K's card and security details without her permission. So it seems plausible that the transactions happened without Miss K's consent.

Further, NatWest has not sent us the details of any detailed investigation it did, nor any discussions it had with Miss K about this at the time. Indeed, it has declined to even give us any evidence to substantiate that anything fraudulent took place at all. This is a point of serious concern. CIFAS markers can have severe effects on a customer, and should not be added without serious consideration and comprehensive evidence.

So at present, I cannot see that NatWest had reasonable grounds to believe that Miss K had committed a crime, nor that it had any substantial evidence to back up such a suspicion – let alone evidence rigorous enough for a CIFAS marker.

NatWest has objected to removing the marker as it feels there are questions that our adjudicator needed to answer. But NatWest has misunderstood the nature of this case. It was for NatWest to investigate things properly before adding this marker. And it is for NatWest to provide substantial, rigorous evidence to back up its marker. We are an impartial alternative to the courts – our service is not here to represent NatWest.

Further, the questions NatWest has raised are not very valid. For example NatWest wants Miss K to say exactly when the purse was stolen, but she wouldn't know that. She'd only know when she noticed it was missing. It asks why she waited to complain, but she's already said it's because she didn't find out about the CIFAS marker until later. It pointed out that Miss K broke its terms and conditions by keeping a record of her PIN, but that is not relevant. It could only add this CIFAS marker if it can evidence Miss K tried to commit a crime. The marker isn't there to punish customers for not keeping their details safe. NatWest also questioned why Miss K didn't tell them about her troubles remembering things before the fraud, but again that's not relevant. Miss K was not required to tell NatWest about that, and it's not a basis for a CIFAS marker.

Looking at things more widely, I note that Miss K did not use this account especially often. And at the time of the alleged fraud there was no money in it, so she wouldn't have been intending to use it. So it seems quite understandable if she didn't immediately notice that the purse with her card in it was missing.

It's also worth bearing in mind that Miss K was only a minor at the time, and should not be held to the same standards as an adult with significant financial experience.

By the time of the alleged fraud, Miss K's account had been open for some years, and had been used for normal spending. So I'm reasonably satisfied that this was a genuine account, and that this is not a case where the account was opened in order to commit fraud.

Miss K never claimed that she was entitled to the disputed funds; she said that she didn't know any of the senders or recipients; and she never attempted to keep any of the money. And I've not seen any evidence that she financially benefitted from this in any way.

Taking into account everything that's been said and provided so far, I currently think that this marker needs to be removed. Of course, if NatWest provides substantial and comprehensive evidence to support this marker – and does so before the deadline of this provisional decision – then I may come to a different conclusion.

From what I understand, this marker has caused Miss K some serious trouble and upset in trying to open or keep a bank account, in trying to sort things out, and in terms of general distress. And while NatWest was allowed to close Miss K's account, I can't see that it gave her reasonable notice, which was a real inconvenience for her. So I currently think that NatWest needs to put all that right too.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 10 May 2022. I granted a further extension to 17 May 2022. Miss K didn't add anything further. NatWest sent us notes from their fraud department, which it felt supported the marker.

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.

NatWest has now sent us its fraud notes, showing that another bank reported the credits to Miss K's account as fraudulent. So NatWest has at least now evidenced that it had cause to be suspicious or concerned.

However, this was not enough to justify a CIFAS marker. NatWest needed to be able to show that Miss K was complicit in attempting fraud or a financial crime – with evidence rigorous enough to report this to the authorities.

As I said in the provisional decision, there appears to be a clear method by which someone could have accessed Miss K's account without her permission. So it seems plausible that all this happened without Miss K's consent. And NatWest does not appear to have made any detailed investigation, or spoken to Miss K at the time, and it has not evidenced that Miss K authenticated or consented to the payments in question. Further, Miss K was a minor, had good reason not to immediately notice her card and details were missing, did not claim entitlement to the funds, does not seem to have benefitted in any way, and otherwise seems to have been using this account genuinely.

So taking everything into account, I still think NatWest needs to remove the marker and compensate Miss K for the trouble and upset it caused.

Putting things right

I direct National Westminster Bank Plc to:

- remove the CIFAS marker in dispute; and-
- pay Miss K £350 compensation for the trouble and upset it caused.

My final decision

I uphold Miss K'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 Miss K to accept or reject my decision before 15 June 2022.

Adam Charles
Ombudsman