

## **The complaint**

Miss R complains that National Westminster Bank Plc closed her account and registered a marker at CIFAS, the national fraud database.

## **What happened**

Miss R says she gave her account number and sort code to a friend at school who wanted to receive money while waiting for their own bank card. And that he must have obtained her security details from her phone when she left the classroom and so could use her online banking. He also sent several false emails from her email account about the source of a payment. Miss R says she wrote to NatWest about this and had no response.

NatWest said it hadn't made any mistake. A payment of £735 was received on 4 December 2020 into Miss R's account and the money was quickly sent on using online banking. The payment has been reported as fraudulently obtained. And it had spoken to Miss R on 2 December 2020 about a new device on her account which she confirmed as genuine, and her account was unblocked. So, it had registered the marker and closed her account.

Our adjudicator didn't recommend that the complaint be upheld. There is a high bar for a CIFAS marker. He'd listened to the call recording NatWest had provided. And seen its contact notes about Miss R telling it that this payment was from her godfather for Christmas gifts for her and her brother. He thought it highly unlikely that a fraudster would have gone to the trouble of sending the emails. And that Miss R either made the transfers herself or allowed someone else to use her account.

Miss R didn't agree and wanted her complaint to be reviewed. She didn't feel we'd listened to her explanation about the passwords being stored on her phone. This marker was having an impact on her ability to get an account and has affected her mental health. She said she is in the process of reporting the person involved and was unhappy that she is being blamed when there are no repercussions for him especially as she said he has done this to others.

## **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 consider whether the report to CIFAS was made fairly. On this point, NatWest 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.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer'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. This can include allowing someone else to use their account in order to receive an illegitimate payment. But a marker shouldn't be registered against

someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I've taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Miss R was deliberately complicit in what happened include whether she knew or ought to have known that the money wasn't legitimate, whether she may have benefitted from the money by keeping part and whether she has provided generic or inconsistent explanations.

In the complaint description form she sent to NatWest she explained that someone had asked to use her account to receive £20 and then not done so. A couple of weeks had passed, and she thought nothing of it. Her passwords could be accessed through a notes app and there was no security on her phone. And she didn't realise about the emails until about 13 December 2020 as she didn't access her email account very often. She was busy and sent an email to NatWest about this a week later and didn't hear back.

I've also listened to the call Miss R had with NatWest. A new device had been registered to her online banking which would have alerted her to potential concerns. But she said that this was something she'd expected. As a result, her account and card were unblocked. The payment was received, and the money moved on 4 December 2020. Miss R has provided a copy of an email she sent on 5 December 2020 asking for her account to be unblocked. NatWest had received the fraud report and it notes her explanation of what happened on 9 December 2020. It wrote to her on 15 December 2020 saying that her account would be closed. It has no record of any further response until her complaint in December 2021.

I won't be able to say *exactly* what happened and I'm thinking about what is *most likely*. Miss R accepts that she wanted her account to be unblocked. And she knew that another device had been registered. On her version of events she had accessed her email account to send an email to NatWest. And I consider it would be unlikely that a fraudster would go to the trouble then of explaining the credit – especially when all the money had been taken. I find it most likely that Miss R reasonably knew that her account was being used for fraudulent activity even if she wasn't making the payment herself. And so, I find that she was deliberately complicit in what happened.

NatWest says that it applied the CIFAS marker because Miss R received fraudulent funds into her account. So, I've looked at whether NatWest 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 Miss R's account of events and the evidence she has provided, I'm satisfied that NatWest had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Miss R received fraudulent funds into her account and didn't report this to NatWest at the time.
- She was in control of who had the benefit of this money.

- NatWest had grounds to believe that Miss R had been involved in the dispersal of fraudulently obtained funds based on the evidence it had.

Given these findings I consider it also had grounds to decide to close her account.

I appreciate what Miss R says about the impact of the marker for her and her personal difficulties. And so, I know she's going to be disappointed when I say that I don't have a reasonable basis to require NatWest 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 Miss R to accept or reject my decision before 21 October 2022.

Michael Crewe  
**Ombudsman**