

## **The complaint**

Mr M complains that National Westminster Bank Plc has added a marker about him at CIFAS, the national fraud database.

## **What happened**

NatWest said it added a marker and decided to close Mr M's account when it received information that he'd been in receipt of fraudulent funds.

Our investigator didn't recommend that the complaint be upheld. He said that there had been two reports of Mr M receiving fraudulent payments. The first related to a payment of £478 on 2 March 2022 and the second to one for £500 on 7 March 2022. He noted that the funds had quickly been withdrawn each time. While Mr M had provided some information about having goods for sale at this time, there wasn't sufficient evidence to show that these had been shipped successfully in relation to these payments. And so, he didn't think that NatWest had made a mistake.

Mr M didn't agree and wanted his complaint to be reviewed. He sent in further information showing some tracking information. And an original receipt for his purchase of the items he said he was selling. The money was withdrawn quickly as he and his partner were moving abroad, and he needed to pay bills. He said that the transactions were 'completely legitimate and above board' and that he was now unable to open a bank account which was having a significant effect on his family.

## **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.

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.

Mr M has accepted that the information he has about these payments is limited and says that he can't access the online marketplace where he was selling the goods. He's provided some information with an invoice for what he says is his purchase of those goods in November 2021. And tracking information relating to two deliveries he says of goods he sent on 8 March 2022 and one it seems relating to a dispatch of a parcel on 9 March 2022. And the latter which from publicly available website information from the courier company appears to have been delivered on 11 March 2022. He has two messages from the marketplace – one dated 28 February 2022 from someone enquiring about purchase and the other dated 11 March 2022 from someone else asking if an item had been posted. There are no follow ups to either that I've seen. I note that our investigator, despite an attempt, wasn't able to obtain any information from that marketplace.

I note from the information provided by NatWest that Mr M's account used here had been opened in November 2021 and it seems had limited use including these credits and two other very similar ones in March 2022. The money received was withdrawn in cash with £300 generally taken each day when it was available.

I've looked at what Mr M has provided carefully. His invoice from November 2021 indicates he had two relevant items at that time which seemed to have cost £624.50 each (£1,249 divided by two). The narrative shown on his statement entered by the senders with the payments appears to be consistent with these items. I've not been able to relate the tracking information to any specific payment. And I note that the first reported fraudulent payment was dated 2 March 2022 and Mr M doesn't provide any tracking receipt before 8 March 2022. And that on 11 March 2022 as I referred to above there was a message from someone saying they hadn't received an item and asking for a tracking number indicating Mr M would then have been aware of an issue.

I take into account that there were two separate reports of very similar fraudulent payments received within days of each other. And that Mr M had taken all the money out as quickly as possible in cash from an account he hadn't otherwise been using. While he may have been sending items at this time I'm not persuaded on balance that the payments reported as fraudulent were in fact legitimately obtained. And it seems that at best on Mr M's explanation these fraud reports were both mistakes. But I don't consider he's shown that was most likely here. So, I find on balance that he was complicit in receiving fraudulently obtained funds.

NatWest says that it applied the CIFAS marker because Mr M received fraudulent funds into his 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 NatWest 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 M's account of events and the evidence he 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:

- Mr M received fraudulent funds into his account and didn't report this to NatWest at the time.
- Mr M authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- NatWest had grounds to believe that Mr M had used fraudulently obtained funds based on the evidence it had.

So, I'm afraid I won't be asking it to do anything further. I note that NatWest gave him notice that it would close his account under the terms and conditions and that after some delay this was done. I appreciate what Mr M says about the impact of the marker for him and that he'll be disappointed by this outcome.

**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 M to accept or reject my decision before 25 April 2023.

Michael Crewe  
**Ombudsman**