

The complaint

Mr T complains that N26 Bank GmbH added a marker about him at CIFAS, the national fraud database, when it closed his account.

What happened

Mr T says he opened an account in 2019 with N26 Bank for investment but never used it. In 2022 he found out that N26 Bank had registered a marker when his account at a different financial business was closed. He says he knows nothing about any fraudulent activity on the account and that it must have been taken over. The marker is having a negative effect on him, and his job is at risk.

N26 Bank said it hadn't made a mistake. It had received a report that a payment made into Mr T's account had been obtained fraudulently and it had been quickly withdrawn. It had emailed Mr T to say it was closing his account. And it was obliged to report this to CIFAS. N26 Bank said that when the account was opened Mr T had provided a copy of his passport and a 'selfie'. There was nothing to support that his account had been compromised.

Our investigator didn't recommend that the complaint be upheld. He said that fraudulent funds had been paid in and then withdrawn using the account card at a cash machine. It was possible that the card had been intercepted when sent in the post. But the PIN used for the withdrawal had been self-selected online and could only be set with the account security information. Mr T said that the phone number associated with the account wasn't his. But the number had been included on the application and there was nothing to support, as Mr T said, that this had been changed by an unknown third party. And to change the number would have required his security information and not just say a text message. While our investigator said that N26 Bank could have done more to contact Mr T at the time, based on the evidence he didn't think that this would have made a difference.

Mr T didn't agree and wanted his complaint to be reviewed. He said that the phone number involved here didn't belong to him and he didn't recognise it. He said it wasn't the number used to set up the account. He said he didn't receive the card and it was intercepted and this meant someone could reset all the passwords and create and reset the PIN. There was no proof that he had knowledge of what happened on the account, and anyone could have found out his email. And he didn't always check his email at the time and so see information about his account. N26 Bank had failed to provide details of the devices used and IP addresses and location of the cash machines involved. He wasn't made aware of what happened until nearly four years later and it's difficult for him to prove anything. Mr T emphasised the potential impact of the marker for him.

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, N26 Bank 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. The evidence must be clear, relevant and rigorous.

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 appreciate that Mr T says he wasn't able to do this at the time. I understand he received an email about the closure of the account, but he says not the full reasons why and he didn't take any further action. While he could have been asked for his explanation at the time I don't think this would have made a difference as I'll set out.

N26 Bank has provided the information used to open the account online using the app. It says this captures what was provided at the time. Mr T accepts he made the application but that the mobile number N26 Bank has isn't his. Even if I was to accept what Mr T says and that he did use his own mobile number, that would have been the device registered and a text would have been sent to him to confirm this. It isn't in dispute that the address for the application, bar the final digit of the postcode was his. And so, the card would have been sent to that address. Mr T believes that this was somehow intercepted and possibly involved N26 Bank staff or has somehow been covered up. There's no evidence to support that allegation.

To take over the account N26 Bank says that a third party would need to know his email, password and have access to the device on the account. And that a text message would be sent to that device to confirm any changes. To set the PIN would require similar information and a token from the card. It has said that no other information about the account was sent with the card. Mr T at one point thought he'd set up the PIN initially on the app and that this had been changed. But he said that if this needed the card then he wouldn't have done this. He's provided emails, which it seems he didn't look at in 2019 and he says show that a phone was 'unpaired' on 25 and 28 June 2019. And that the PIN was reset on 28 June 2019.

Mr T says he hadn't shared any information with anyone else and that he is the victim here. And that no changes would have been required if he'd been involved.

I won't be able to say *exactly* what happened here and I'm thinking about what is *most likely*. I've considered Mr T's testimony and what he's said about his account being taken over. While that isn't impossible I don't think it's the most likely explanation here. I'm satisfied that to take over his account would require the security credentials and the device he'd been using. And for the card to be intercepted. In any event N26 Bank says that there was no change to the phone number used to access the account from that at the application. I'm not clear that further information about IP addresses or the withdrawals would help resolve things even if now available. Or that Mr T would have been better able to explain things in 2019. I don't rule out him allowing someone else to use his account. But that's not his explanation and nor does he say that he had been say the victim of a scam in

which he allowed this. So here I find it most likely he was complicit in what happened and is responsible for what happened on his account.

N26 Bank says that it applied the CIFAS marker because Mr T received fraudulent funds into his account. So, I've looked at whether it 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. 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 T's account of events and the evidence he has provided, I'm satisfied that N26 Bank had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr T received fraudulent funds into his account and didn't report this to N26 Bank at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- N26 Bank had grounds to believe that Mr T had used fraudulently obtained funds based on the evidence it had.

I can appreciate that Mr T will be very disappointed with my assessment given what he's said about the impact of the marker for him. But I'm afraid I don't have a basis to require N26 Bank 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 T to accept or reject my decision before 6 July 2023.

Michael Crewe
Ombudsman