

## **The complaint**

Mr K complains that N26 Bank GmbH (“N26”) wrongly registered a CIFAS marker against his name. CIFAS is the UK’s fraud alert service.

## **What happened**

N26 is an online and mobile bank which operated in the UK between 2013 and 2020.

In December 2018 N26 opened an account in Mr K’s name. In February 2019 £500 was deposited in the account. It was withdrawn almost immediately at a cash machine, using a card issued on the account. The bank which had sent the payment alerted N26 to a possible fraud. N26 immediately closed the account and later placed a CIFAS marker against Mr K’s name.

Mr K says he didn’t open the account and didn’t know about it until around two years later. In October 2021 he complained through solicitors to N26, saying that the CIFAS marker should be removed. He explained that he had started university in 2018 and that he had had to produce various pieces of identification in order to register. He thought that other students had gained access to his documents and used them to open the account. He was adamant that he had not opened it.

N26 did not accept Mr K’s explanation. It said, in summary:

- When the account was opened, its app required Mr K to take a “selfie” and an image of his photo identification (in this case, a driving licence). This could only be done “live”, that is, using the app. It was not possible to use, for example, an archived or manipulated image.
- The live photo and driving licence photo matched each other.
- As part of the security process, the bank sent emails to the email address provided in the application. That was the same address that Mr K used later.
- Cards connected to the account were sent to Mr K’s home address and were activated using the app.

N26 concluded that Mr K had not been the victim of identity theft as he had suggested, and it refused to remove the CIFAS marker. His complaint was referred to this service. Our investigator was not persuaded however that Mr K had not opened the account and did not recommend that the complaint be upheld. She did however note that there had been a delay in recording the CIFAS marker and recommended that it be removed 154 days before it would otherwise have been.

Mr K asked that an ombudsman review the case.

## **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.

Banks and other institutions have mutual arrangements to ensure that, where appropriate, CIFAS markers are recorded. To that extent, therefore, N26 was under a duty to place a marker against Mr K's name if he had misused an account. The primary issue I need to consider therefore – in order to decide what's fair and reasonable – is whether Mr K was guilty of "*misuse of facility*". We generally take the view that a bank needs to show that there are grounds for more than mere suspicion or concern before placing a CIFAS marker. That falls short of the usual criminal standard of proof, but would usually require some supporting evidence.

N26 has in this case provided a detailed explanation of how the account was opened. I cannot completely rule out the possibility that someone obtained Mr K's documents, but it seems to me most unlikely that this would have enabled a third party to open the account. That needed a "live" photo of Mr K; it's unlikely a suitable picture could have been obtained without his knowledge and cooperation. Whoever withdrew funds from the account would have needed access to Mr K's card and PIN. And the person who opened the account would also have needed access to his email – which was later used to verify the authority of Mr K's solicitors to represent him in bringing this complaint.

For these reasons, I believe that Mr K was involved in the opening of the account and in the activity on it. In the circumstances, I think that N26 was justified in recording the CIFAS marker.

I note that N26 has acknowledged that there was an internal delay in processing the CIFAS marker. It should therefore consider what steps it can take to ensure that it is removed no later than six years after it should have been recorded, rather than six years after it was in fact recorded. I do not however propose to make an award requiring that it do so.

I have in addition considered what the position might have been if I had concluded that Mr K was indeed a victim of identity theft. If that were the case, he would not have been a customer of N26. Nor, I think, would his complaint arise from any other relationship set out in our own rules at DISP2.7.6. It's arguable therefore that this service would have no power to consider his complaint. However, since I am satisfied that he was a customer, I do not need to reach any conclusions on that point.

### **My final decision**

For these reasons, my final decision is that I do not uphold Mr K's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 July 2023.

Mike Ingram

**Ombudsman**