

The complaint

Mr R complains that Nationwide Building Society unfairly registered a marker about him at Cifas, the national fraud database. Mr R is also unhappy that Nationwide closed his account.

What happened

Mr R had a bank account with Nationwide.

On 7 June 2021, a payment of £1,500 was made into Mr R's account, from an individual I will refer to as Mr C. Following this some of the funds were used by Mr R to pay direct debits, make purchases and transferred to another account in Mr R's name.

A few days later, Nationwide were notified by another bank that the £1,500 payment was fraudulent and that their customer, Mr C, had been the victim of a scam. Nationwide blocked Mr R's account and asked Mr R to get in touch with them. The explained that it wanted to talk to him about the money he'd received from Mr C.

In response, on 10 June 2021, Mr R emailed Nationwide. He told them that he'd received the £1,500 as a gesture of goodwill from someone he had provided support to, who he had spoken with through a social media messaging app. Mr R said he had no evidence of the messages as they had been deleted and the individual had blocked him from contacting them.

Mr R also visited a Nationwide branch to speak to someone about the transaction. He told staff that he had no evidence of the messages from the individual and that he had done some work for them, and they had paid him, which is why he had received the £1,500. But his friend had now blocked him and deleted all the messages.

Nationwide completed its review. Following this it placed a fraud marker against Mr R's name with Cifas. This was for misuse of a facility in relation to retaining fraudulent funds. Nationwide also closed Mr R's account. And gave him 60 days' notice that he'd need to make alternative banking arrangements.

Mr R discovered the Cifas marker in 2023, when another bank account he had was closed. Mr R complained to Nationwide. He said since the marker had been loaded, he had made further enquires and reached out to Mr C in an effort to clear his name of any wrongdoing.

Mr R said that Mr C told him that he had fallen victim to fraudsters who gained access to his bank account. The fraudsters then transferred money from his account to Mr R's who's bank account details were set up as a previous payee on Mr C's account, because Mr R had done some work for Mr C in late 2020. Mr R said that the fraudsters then intended to recover the funds from Mr R and that he began receiving lots of phone calls from caller withheld numbers after the £1,500 was deposited into his account - which he believes were from the fraudsters.

Nationwide reviewed what Mr R said but maintained its position. It said it had loaded the

Cifas marker fairly, so it wasn't willing to have it removed. Unhappy with this response, Mr R brought his complaint to our service where one of our investigators looked into what had happened.

The investigator asked Mr R about the payment into his account from Mr C. Mr R said a few months before he received the £1,500, Mr C had paid him for work he had done for him. He said he was able to evidence the payment he had received from Mr C and provided screen shots of two £40 transactions that he'd received from Mr C in mid- December 2020. Mr R said six months prior to receiving the £80 from Mr C he had lent his sister £2,000 in cash. He said his sister had told him that she would repay him in instalments, so when he noticed his balance had increased, he assumed the money from Mr C, was his sister repaying him the money he had lent to her. Mr R said he visited a Nationwide branch when he realised that the money wasn't from his sister. And that the bank told Mr R the money would be sent back to Mr C, and he didn't need to do anything further.

The investigator asked Mr R to explain why he had told Nationwide the money was for work he'd done. Mr R said he had agreed to do so more work for Mr C, which included making advertising materials, but he hadn't actually done the work yet. So he questioned Mr C about the payment and that's when he told him he'd fallen victim to fraud, so the money wasn't meant for him.

Mr R provided screenshots of messages between him and Mr C to support his explanation. He said he suspects Mr C is leaving out details of the fraud and said he didn't have any evidence of the loan he made to his sister because she is a member of his family. Mr R said he didn't check if the £1,500 was from his sister before he spent some of it, because at the time he had asked her to repay him because his brother had asked him for money – so he was expecting the money.

The investigator reviewed everything and said that Nationwide hadn't done anything wrong when it loaded a marker against Mr R and closed his account. Mr R disagreed. He wants the marker removed. He said he has done nothing wrong and has been treated like a criminal. He said the marker was making it very difficult from him to maintain a bank account, which was important for immigration purposes. He also explained that his mental health had suffered. And that he is in a good position financially so he didn't have to commit fraud.

As no agreement could be reached the matter has come to me to decide.

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'll deal first with Nationwide's decision to block and close Mr R's account. Nationwide has extensive legal and regulatory responsibilities they must meet when providing account services to customers. Having looked at all the evidence, I'm satisfied that Nationwide acted in accordance with these obligations when it blocked and reviewed Mr R's account. And it was entitled to do so under the account terms and conditions. Nationwide was also within its rights to close Mr R's account and did so in line with the account terms and relevant regulations. So, I can't say Nationwide have done anything wrong when it closed Mr R's account.

I've next moved on to consider the loading of the Cifas marker against Mr R. The marker that Nationwide have filed with Cifas is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr R is guilty of a fraud or

financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr R’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. But a marker shouldn’t be registered against someone who was unwitting; there should be enough evidence to show *deliberate* complicity. There’s also a requirement that Nationwide should be giving the account holder an opportunity to explain what was going on.

So, I need to consider whether Nationwide have sufficient evidence to meet the standard of proof and load a marker for misuse of facility with Cifas. Having looked at all the information provided, I’m satisfied they have, and I say this because:

- I’ve seen evidence from Nationwide showing that another bank notified them that Mr R received a fraudulent payment into his account in June 2021 – the £1,500 from Mr C.
- When Mr R first spoke to Nationwide, he told them that he’d received the money as a gesture of goodwill from someone he had been supporting. But he couldn’t provide any evidence to support this explanation as the person had blocked him from contacting them and all the messages between them had been deleted.
- Mr R then said he’d received the money from Mr C for work he intended to do for him, having previously completed some work for him in late 2020. Mr R hasn’t been able to provide any evidence to support this arrangement, such as any quotes or contracts. In fact, the evidence he has provided show that Mr C hadn’t asked Mr R to do any further work for him – only that he was interested in this happening when he was ready.
- This explanation is also contrary to what Mr C told his bank, which is that his account had been taken over by fraudsters and payments made from his account.
- Mr R says (according to Mr C) the fraudsters sent the money to Mr R’s account because he was a payee on Mr C’s account, and that the fraudsters then intended to try and recover the money from him – he’s said he received strange phone calls for days after he received the funds from unidentified numbers which he suspects were made by the fraudsters who’d gained access to Mr C’s account.
- I don’t find it plausible that fraudsters having gained access to Mr C’s account would send the money in it to another account they didn’t have access to – it just doesn’t make sense. I see no reason why a thief would go to the trouble of doing this when they could have moved the funds to an account they already controlled. The only reasonable explanation for this action (if I accept this to be the case) would be that Mr R was somehow involved.
- I find it surprising that Mr R thought funds from his sister should be paid using a business reference unrelated to her. Even more surprising is that Mr R didn’t question why he was being sent funds in this manner. And he didn’t alert Nationwide. With this in mind, I think Mr R knew or ought reasonably to have known, that the account was being used for fraudulent purposes.
- Mr R also hasn’t provided any evidence that he lent money to his sister – such as a bank statement showing he withdrew this money, and when this took place.

- Mr R has provided several explanations about the money he received from Mr C. This leads me to doubt the credibility of Mr R's version of events and suggests to me that Mr R was potentially involved in fraudulent behaviour.
- Mr R has told this service that Nationwide didn't give him an opportunity to provide his side of the story and didn't conduct a proper investigation. Nationwide has provided evidence that contradicts what Mr R says – that it reached out to Mr R at the time, through different mediums, and Mr R responded saying he didn't have any evidence to support what he told the bank about why he'd received the money.
- It's not clear to me why he didn't present the evidence he has now provided to this service to the bank at the time when he was given an opportunity to do so.
- Mr R only got in touch with Nationwide two years later when another bank closed his account. I find it telling, that if as Mr R says he hadn't done anything wrong, that he didn't complain about the closure of his account at the time, when his account was closed, especially as from what Mr R has told us about his circumstances having a bank account was very important to enable his wife to remain in the UK.
- In my view, based on all the evidence, I think it's most likely Mr R allowed his Nationwide account to be used for receiving fraudulent funds. And I think he was a willing participant in this and reasonably knew this wasn't a legitimate activity.

In summary, I'm not persuaded by Mr R's version of events. The requirements around banks lodging markers at Cifas include there being sufficient evidence that the customer was aware and involved in what was going on. When I weigh everything up, I think this most likely exists here from reviewing all of the evidence and that Nationwide was therefore justified in placing a Cifas marker against Mr R's name. So, I won't be asking Nationwide to remove the marker.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 October 2024.

Sharon Kerrison
Ombudsman