

The complaint

Mr A complains that Nationwide Building Society (“Nationwide”) unfairly lodged a CIFAS marker against him, withheld legitimate funds, removed other funds that belonged to him and closed his account.

What happened

Mr A opened a personal account with Nationwide and asked them whether he could make crypto transactions. During the conversation, Nationwide advised that they restricted payments to one particular crypto platform which I’ll refer to as B.

Mr A undertook numerous “trades” on B’s crypto platform, depositing the payments into his Nationwide account. During one particular set of trades with a customer I’ll refer to as M, Mr A agreed to sell crypto for £2,000 in total and made the transfer on B’s platform to M.

M then sent 2 x £1,000 payments to Mr A’s Nationwide account. Shortly after receiving the money, Nationwide received a report from another bank that these payments (from M) were the result of a scam. Nationwide asked Mr A for evidence that he was entitled to these funds. He provided details from B concerning the arrangement he had with M.

Nationwide weren’t satisfied with Mr A’s evidence and decided to close his account, return the £2,000 to the sending bank, block Mr A’s access to the remaining funds (until they received evidence of Mr A’s entitlement) and lodge a “misuse of facility” marker against him with CIFAS (a fraud prevention organisation). Nationwide approached other senders of funds to Mr A’s account, but little information was returned to them (from the sending banks).

Mr A complained about his treatment and wanted his funds back and the marker removing. Nationwide investigated the complaint but didn’t change their position. Mr A then brought his complaint to the Financial Ombudsman Service for an independent review.

Mr A’s complaint was assigned to an adjudicator to look into and information about the situation was sought from both parties. Mr A provided details of his crypto trading activities through B’s platform, including evidence that he’d been approached by M to purchase crypto. B confirmed the trades had been completed appropriately and that M had sent those agreed funds to Mr A’s account.

Nationwide provided their notes of their investigation which in summary said:

- They had concerns about the activities of Mr A.
- He was using the personal account for an investment scheme which was against the terms of the account’s usage.
- They’d received notification about a scam and that Mr A had received funds from it.
- They’d written to other banks about the source of funds in Mr A’s account.
- Mr A’s account was closed.
- A CIFAS marker had been lodged against him.
- They’d assessed his evidence but remained unconvinced about the legitimacy of his activities.

After reviewing the evidence, the adjudicator initially thought that Nationwide had acted appropriately and didn't recommend any action was required from Nationwide.

Mr A strongly disagreed with the report and asked for a further review of it, continuing to argue that his conduct was legitimate, and that Nationwide had acted unfairly towards him. Mr A also sought the assistance of a professional representative.

After reviewing the case again, the adjudicator upheld (in part) Mr A's complaint and said:

- It was fair for Nationwide to close the account.
- They didn't have sufficient evidence to lodge a CIFAS marker against Mr A and should remove it.
- Nationwide should also release his retained funds and pay him £150 for the trouble and upset caused by Nationwide's handling of the complaint.

Mr A's representatives responded and asked for interest to be added and consideration of their professional fees to be included in the redress.

Nationwide responded and initially agreed to remove the CIFAS marker and pay £150 compensation. They said that the £2,000 was returned to the sending bank and Nationwide no longer had those funds.

Nationwide were asked to confirm that the retained funds would be returned to him which they did after clarifying that the final amount retained in the account was £6,705.00.

Mr A's representative wanted the £2,000 funds that were returned by Nationwide to be included in the payment to Mr A as well as their invoice being paid for.

No agreement could be reached concerning the final settlement and Mr A asked for an Ombudsman to look at his complaint.

I issued my provisional findings on the merits of Mr A's complaint on 21 December 2023. In my provisional findings, I explained why I intended to uphold Mr A's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

"What I've provisionally 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.

The principal issue concerning this complaint is the calculation of the redress. So far, Nationwide has agreed to:

- *Remove the CIFAS marker.*
- *Pay £150 compensation and return the retained funds which amount to £6,705.*

There remains the issue of the £2,000 returned to the sending bank, interest on the retained funds, the representatives request for payment of their bill and the closure of the account. My current thoughts and recommendations on these various matters are:

Account closure

I don't think it was unreasonable for Nationwide to close Mr A's account. He was in effect

carrying out a business using his personal account which is in contravention of the terms both parties agreed to when Mr A opened it. I won't be asking Nationwide to do anything further concerning this.

£2,000

Once Nationwide received the report concerning the £2,000 transferred to Mr A's account and assessed the evidence, they weren't convinced of Mr A's legitimacy and returned those funds to the sending bank. The issue for me to consider here is should they now be returned to Mr A?

Nationwide have now accepted they should remove the CIFAS marker. The basis for the report received by Nationwide isn't supported by the evidence provided by Mr A, it follows that those funds should also be returned. I understand Nationwide no longer have them, but that isn't a concern for Mr A. It would be unfair to expect Mr A to shoulder the loss of those funds, so Nationwide should now repay the £2,000 they returned to the sending bank.

Interest

Mr A has lost the use of those funds, so I think it's both fair and reasonable for Nationwide to include simple interest at 8% from the date they prevented Mr A from accessing those funds to the date of settlement.

Representative's invoice

I won't be recommending the payment of the invoice presented by Mr A's professional advisors. That's because at the time, Nationwide were unaware of the expenses Mr A was incurring, so had no say in the matter. His complaint was also being channelled through our service and it was Mr A's personal choice to incur these costs. I don't think it's fair or reasonable to expect Nationwide to pay for Mr A's legal expenses.

My provisional decision

I'm currently intending to uphold Mr A's complaint (in part) and recommend that Nationwide:

- *Remove the CIFAS marker.*
- *Pay Mr A £150 compensation.*
- *Return the retained funds held in the account which amount to £6,705.*
- *Refund the £2,000 that was returned to the sending bank, so making the substantive refund £8,705.00 in total.*
- *Include simple interest at 8% from the date the funds were retained to the date of settlement."*

I invited Mr A and Nationwide to give me any more evidence and information they wanted me to consider before issuing my final decision. Both parties responded and accepted my recommendations.

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.

Having done so, and as both parties accepted my recommendations, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

Putting things right

In order to finalise this complaint, Nationwide should now:

- Remove the CIFAS marker.
- Pay Mr A £150 compensation.
- Return the retained funds held in the account which amount to £6,705.
- Refund the £2,000 that was returned to the sending bank, so making the substantive refund $£6,705 + £2,000 = £8,705.00$ in total.
- Include simple interest at 8% from the date the funds were retained to the date of settlement.

My final decision

My final decision is that I uphold this complaint against Nationwide Building Society and they're now instructed to settle it as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 16 February 2024.

David Perry
Ombudsman