

The complaint

Mr O complains that Nationwide Building Society unfairly registered a marker about him at Cifas, the national fraud database.

What happened

Mr O had a basic bank account with Nationwide.

In September 2022, a payment of totalling just over £2,000 was made into Mr O's account. Following this Mr O attempted to move the funds onto another account with a different bank. However, the payment was returned, so he withdrew the money in cash.

Nationwide were notified by another bank that the payment was fraudulent and that their customer had been the victim of a scam.

Nationwide blocked Mr O's account and decided it needed to look into how he was operating his account. Nationwide sent Mr O an email and text message asking him to get in touch with them. The bank also tried to get in touch with him over the phone and left him a voicemail letting him know that it needed to speak to him about the fraudulent money that had been paid into his account. Mr O didn't respond.

Nationwide completed its review, it placed a fraud marker against Mr O's name with Cifas, the Credit Industry Fraud Avoidance System. This was for misuse of a facility in relation to a retaining fraudulent funds. Nationwide also closed Mr O's account.

Mr O discovered the marker in December 2023, when he began having trouble opening other bank accounts and obtaining credit.

Mr O complained to Nationwide. He explained that he hadn't been involved in any fraud and that the payment had been made by a friend online, who I will refer to as Mr A. Mr O said that Mr A was teaching him how to trade in Cryptocurrency and said that he needed to put money into Mr O's account because he'd sold a watch and was having problems using his own account. Mr O agreed. He said that he had tried to send the money onto another account, but it had bounced back. So he went to branch, withdrew the money, and gave it to Mr A. Mr O said that following this, Mr A blocked him on social media, and he hasn't been able to contact him again.

Mr O told Nationwide that the marker was causing him a lot of problems opening another bank account and asked Nationwide to remove it. Nationwide looked into Mr O's complaint but didn't uphold it. It said it had loaded Mr O fairly with Cifas. However, it offered to relook at things if Mr O was able to provide any evidence to support his explanation. Unhappy with this response Mr O brought his complaint to our service.

An investigator looked into Mr O's complaint. She asked Mr O about the payment into his account and whether he had any evidence to support his explanation. Mr O said he wasn't

able to access any of the messages he'd received from Mr A. And that he was no longer in touch with him.

The investigator reviewed everything and said that Nationwide hadn't done anything wrong when it loaded a marker against him. Mr O disagreed. He wants the marker removed. He said he'd simply made a mistake by allowing the payment to come into his account. He said he had cooperated fully with Nationwide's investigation and provided the bank with evidence to support his explanation. He said the marker was making it very difficult from him to open a bank account, gain employment and support his family. He also explained that his mental health had suffered.

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 O'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 O's account. And it was entitled to do so under the account terms and conditions. Nationwide was also within its rights to close Mr O'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 O's account.

I've next moved on to consider the loading of the CIFAS marker against Mr O. 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 O 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 O'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 O received a fraudulent payment into his account in September 2022.
- Mr O has explained his friend, Mr A, had asked to use his account to receive payment for a watch he'd sold because he was having difficulties using his own account. I find it surprising that Mr O thought funds from his friend should be paid using a named reference unrelated to his friend, with no evidence of links between Mr O's friend and the sender of the funds. Even more surprising is that Mr O didn't question why he was being sent funds in this manner. With this in mind, I think Mr O knew or ought reasonably to have known, that the account was being used for fraudulent purposes.
- Nationwide has provided evidence to show that Mr O tried to immediately move the money paid into his account within minutes of the funds crediting his account to another account in his name. If this was a legitimate payment, I don't understand the urgency of Mr O's actions and more significantly why Mr O would send the money to another account in his name and not directly to Mr A. I see no reason why Mr O would do this. When this failed, Mr O withdrew the funds in a branch.
- Mr O hasn't provided any evidence about his arrangement with Mr A which would support his explanation. I appreciate Mr O says his relationship with Mr A was conducted over social media and is no longer traceable. But I find the fact there is no evidence at all just isn't credible.
- Mr O has told this service that he fully cooperated with Nationwide's investigation and provided evidence to support his explanation. But there is no evidence this happened. Nationwide has provided evidence that contradicts what Mr O says – that it reached out to Mr O at the time, through different mediums, and Mr O didn't contact them.
- Mr O only got in touch with Nationwide some years later when he discovered the marker. I find it telling, that if as Mr O says he hadn't done anything wrong, that he didn't contact Nationwide at the time, when his account was closed, especially as it appears Mr O's account also had a balance.
- I've considered what Mr O says about the impact the marker has had on him. But he hasn't described being placed under any duress or being especially vulnerable. In my view, based on all the evidence, I think it's most likely he allowed his Nationwide account to be used for receiving fraudulent funds. And I think he was a willing participant in this and in moving the money on and reasonably knew this wasn't a legitimate activity.

So, when I weigh everything up, I'm not persuaded by Mr O's version of events that he knows nothing about the fraudulent payment. Having looked at all the evidence, I think there would've been good grounds to report the events here to the police to investigate, and that Nationwide was therefore justified in placing a Cifas marker against Mr O's name. I think the evidence shows that Mr O was involved in a misuse of facility. I also think it more likely than not that Mr O knew rather more about the account activity than he's told Nationwide or this service. 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 O to accept or reject my decision before 2 July 2024.

Sharon Kerrison

Ombudsman