

The complaint

Miss T complains that Nationwide Building Society unfairly registered a marker about her at Cifas, the national fraud database and closed her account.

What happened

Miss T had an account with Nationwide.

In December 2023, a payment of £9,800 was made into Miss T's account, from her brother, who also had an account with Nationwide. For ease of reading, I will refer to Miss T's brother as B.

Miss T then carried out a number of transactions from her account using the funds including, making a £4,900 payment to a business, two ATM withdrawals for a total of £500, and an £826 payment to another individual I will refer to as S. Miss T also transferred £4,000 back to her brother's Nationwide account.

Following this in March 2024, Nationwide were notified that the payment from B originated from fraud. Nationwide blocked Miss T's account and decided it needed to look into how she was operating her account. Miss T discovered that she wasn't able to access her account and contacted Nationwide to try and find out if there was a problem.

Nationwide asked Miss T to explain her entitlement to the money that had been paid into her account from B. Miss T told Nationwide that she'd received the money from her brother, that they shared an address, and she provided an email from B, which said he'd made the transaction. Nationwide considered what Miss T had said about the money and looked at how it had been used. The end result of the review was that Nationwide decided they didn't want to provide banking facilities to Miss T anymore and closed her account immediately. It also decided to place a fraud marker against Miss T's name with Cifas. This was for misuse of a facility in relation to retaining fraudulent funds.

Miss T discovered the marker when she began having trouble opening other bank accounts, and another bank told her to check with Cifas. Following this, Miss T complained to Nationwide and asked them to remove the marker. She said Nationwide hadn't properly asked her about the money she received from B. So, she said Nationwide hadn't given her a chance to explain things. She said she had returned all the money to B, and she hadn't kept any of the money. So, she said Nationwide had treated her unfairly when it loaded the marker.

In response, Nationwide said it hadn't done anything wrong when it had closed Miss T's account and loaded the marker. Unhappy with this response Miss T brought her complaint to our service. Miss T said that because of the fraud marker, she hadn't been able to open another bank account to receive her wages, which had caused her financial problems. She also said that her mental health has been impacted. Overall, Miss T said the situation had been very stressful and upsetting.

An investigator looked into Miss T's complaint and asked Nationwide and Miss T for some more information about what had happened. In response, Miss T provided more information about the £9,800 she'd received from B. She explained that she wasn't aware B was going to transfer the money into her account. She said that B needed to make a payment to hire a venue and due to the amounts involved couldn't do that from his own account. So, B had moved some money into her account. And then asked her to send some money back to him which she did. Miss T said she then met her brother, and B used the rest of the money to pay for the costs of hiring a venue. Miss T said she didn't keep any of the money B sent to her and had sent it all back.

The investigator asked Miss T to provide evidence of any instructions she'd received from B regarding the money and to prove that the money had been used to pay for a venue hire. But Miss T said that she couldn't provide anything as everything had been arranged in person and over the phone with B. She also said that she didn't have any paperwork relating to the venue hire, but B could confirm the transaction was related to him.

After reviewing everything the investigator said that Nationwide hadn't treated Miss T fairly when it applied the marker and recommended Nationwide should remove the marker and pay Miss T £100 compensation for the trouble and upset the marker had caused her. Miss T agreed with the investigator. She said that she hadn't done anything wrong and hadn't been a knowing participant in laundering funds. Nationwide disagreed with what the investigator said. It maintained that based on the activity on Miss T's account after the funds came into her account and lack of explanation from her, it was satisfied that Miss T was complicit in receiving fraudulent funds.

As no agreement could be reached the matter came to me to decide. After reviewing all the evidence, I issued a provisional decision in which I said the following:

Firstly, I should make it clear to Miss T that the Financial Ombudsman Service is an informal dispute resolution service acting as an alternative to the courts. We don't consider complaints in the same way as a criminal court might. It is not my role to prove exactly what happened. Where there is a dispute about what happened and the evidence is incomplete, inconclusive, or contradictory, we reach our conclusions on the basis of what we consider is most likely to have happened having considered the available evidence and wider circumstances.

I'll deal first with Nationwide's decision to block Miss T's account. Nationwide has extensive legal and regulatory responsibilities they must meet when providing account services to customers. They can broadly be summarised as a responsibility to protect persons from financial harm, and to prevent and detect financial crime. It's Nationwide's duty to reasonably ensure accounts are being used in the way they should and to protect the money which is held in them.

Fraud is a serious matter, and one way financial businesses and banks can help to tackle fraudulent payments is by restricting accounts when allegedly fraudulent payments are received into them. And that's what happened here. I should also add that Nationwide is not required to prove beyond reasonable doubt that Miss T is guilty of a fraud of financial crime before it decided to block her account and carry out a review.

Having looked at all the evidence, I don't believe it was unreasonable in the circumstances for Nationwide to block Miss T's account. Nationwide has explained that this was its standard procedure, and I accept that it was. I'm satisfied that in doing so Nationwide were complying with its legal and regulatory obligations. Doing so also enabled Nationwide to consider how best to react to the information it had received about the money that had been transferred into Miss T's account, by B. So, whilst I accept, Nationwide's actions caused

Miss T inconvenience and upset when it decided to block her account, I can't say Nationwide did anything wrong and treated her unfairly in doing so.

Following its review Nationwide decided to close Miss T's account. Nationwide have relied on the terms and conditions of Miss T's account in closing the account. These outline that Nationwide can close a customer's account with two months' notice, and in certain circumstances they can close an account immediately. In this case, Nationwide closed Miss T's account immediately.

For Nationwide to act fairly here they needed to meet the criteria to apply their terms for immediate closure – and having looked at these terms and all the evidence I'm satisfied that Nationwide did. I say this because Miss T's account was being used to receive and spend funds that had originated from fraud. So, it was entitled to close the account as it's already done and end its relationship with Miss T. This means I won't be asking Nationwide to reopen Miss T's account.

I've next moved on to consider the loading of the Cifas marker against Miss T. Miss T says Nationwide shouldn't have recorded a marker against her name and didn't speak to her about all the activity on her account. She said Nationwide were only interested in the money she sent back to B, which she says she explained.

The marker that Nationwide 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 Miss T is guilty of a fraud of 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 Miss T'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.

Here Miss T received finds into her account that were confirmed by a third party bank to have originated from fraud. The bank reported the funds as 'second generation', meaning that the funds didn't enter Miss T's account directly, from their source, but were transferred to Miss T's account from someone who did receive the funds from the victim – in this case Miss T's brother, B.

Transferring funds to numerous accounts following the initial fraud is commonly referred to as money laundering. There are times where unsuspecting victims are used to transfer funds through their account or receive money unknowingly from fraud for goods and services provided. This is common in second generation recipients and therefore presents a challenge when associating the activity to the original act.

On 6 March 2024, Nationwide told Miss T that they had concerns about the £9,800 that had been paid into her account. Nationwide asked Miss T to send them evidence of where the funds had come from and proof that the money belonged to her. In response Miss T sent Nationwide a screenshot from B, which confirmed he'd sent her the money. But she didn't provide anything else.

Whilst I'm satisfied Nationwide did provide Miss T with an opportunity to explain why she'd received the money from B, I think it could have explored things a little further. With this in mind I can see the investigator asked Miss T to provide any information she had about her entitlement to the money she received from B and what she did with it.

In response, Miss T provided a screenshot of an email from her brother who confirmed he'd sent Miss T the funds. She maintained that some of the money was used by her brother to pay for venue hire but she couldn't provide any paperwork to back this up, or any evidence to support this arrangement such as conversations she'd had with B. She's explained given B is her brother and lives at her address, everything was discussed in person or over the phone.

She also said that she hadn't kept or used any of the money – in other words she hadn't benefitted from the fraudulent funds. Based on Miss T's response, I think if Nationwide had asked Miss T about the payments it's likely that she would have provided the same information to them.

So, I need to consider whether based on all the information including the evidence Miss T has submitted to us, whether Nationwide had 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 did, and I say this because:

- I've seen the evidence from Nationwide that confirms they were notified by another bank that the money Miss T received from B originated from fraud.
- Miss T has explained why she received the payment B – that he had to pay for the hire of a venue and due to the amounts involved and limits on his own account – sent her the money so that the payment could be made. And she has sent a screenshot of an email B sent Nationwide to support her explanation. The evidence she has supplied simply shows that the money was sent by B – which isn't in dispute. I've considered this evidence, but I'm not persuaded that this shows Miss T was entitled to the money.
- Miss T hasn't provided any evidence about her arrangement with B which would support her explanation, such as a contract of hire, or any communications between B and the venue. I appreciate Miss T says everything was arranged in person or over the phone. But I find the fact there is no evidence at all just isn't credible. Especially given the amount of money involved, which from looking at Miss T's statement was just under £5,000 which was paid to a business to allegedly hire a venue. If this was a legitimate transaction, I'd expect there to be some paperwork which Miss T could provide. But nothing has been provided.
- I also find it odd that B would transfer £9,800 to Miss T and then ask Miss T to transfer nearly half of the money back to him – I can't think of a reasonable and legitimate explanation why someone would do this.
- Miss T says she never used any of the money. And sent it back to B. But this is contrary to the evidence provided by Nationwide. From looking at Miss T's statements I can see that £500 was withdrawn in two separate ATM transactions. I note too that £826 was sent to S. The same amount was then transferred back to Miss T by S on 16 December, and then on 18 December 2023, these funds were spent at a luxury online retailer. I can see that Miss T has transacted with S prior to

these transactions. And haven't seen any evidence that Miss T has disputed any of these transactions. So, I'm satisfied that she made them. This activity suggests to me that Miss T was potentially involved in money laundering. And benefitted from the money she received from B.

- I've considered what Miss T says about the impact the marker has had on her. But she 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 she allowed her Nationwide account to be used for receiving fraudulent funds. And I think she was a willing participant in this and in moving the money on and spending it. And that she reasonably knew this wasn't a legitimate activity. So, I'm not convinced Miss T is an innocent party. I think the evidence shows that Miss T was involved in a misuse of facility.

In summary, 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. Miss T has received funds into her account that have originated from fraud. She has been unable to provide any corroborative evidence to support her testimony that she is an innocent party of the transfer of the funds and was unaware of their origins. I also find that the suspicious circumstances of the movement/use of the money, adds weight to this argument.

Having looked at all the evidence I'm satisfied this shows there were reasonable grounds to suspect that fraud had been committed. And from evidence I've seen that Miss T was likely complicit in this. So, while I acknowledge Nationwide didn't ask Miss T very much about the money (as it should have) and could have done more to investigate the wider circumstances of the money the payment Miss T received and given Miss T more of a chance to defend her position, I'm satisfied had it done so, the marker would have achieved the burden of proof required.

On this basis I didn't think it would be fair or reasonable to ask Nationwide to remove the marker or pay Miss T compensation.

Nationwide accepted my provisional decision.

Miss T disagreed. In summary she said:

- She had no knowledge of the money being sent to her before it arrived into her bank account. When she spoke to her brother, he asked her to send some money back and use the rest to pay for the hire and take the rest out in cash. She was never aware of any suspicious activity.
- She can't provide any statements for the venue hire.
- She told Nationwide and this service that money was taken out of the same ATM and was given to her brother on the day.
- She never benefitted from the money. The transaction she made to the retailer was paid for by money that was already in her account which had been sent to her from her god father to buy a coat. She worked for the retailer so received discounts for family and friends.
- Her mental health has been impacted because of the marker being applied. She has lost weight and suffered anxiety.

Now both sides have had an opportunity to comment I can go ahead and issue my final decision.

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.

In response to the provisional decision, Miss T has made some comments, but she hasn't provided any new information or evidence in support of her comments, for me to consider.

I've seen a great deal of evidence, in particular information in relation to the fraudulent payment Miss T received from B. And the subsequent movement of the funds. I have considered all of this along with Miss T's recent comments and the arguments she has raised throughout the life of this complaint. I am not going to rehearse every argument here. But I will comment on Miss T's response to my provisional decision.

Miss T has said that she wasn't aware her brother was sending her any money until it was in her bank account. I don't find it plausible that Miss T's brother wouldn't have alerted Miss T to the fact he was transferring more than £9,000 to her account especially as according to Miss T he had given her instructions about what to do with the money, they share an address, and the money was moved quickly once it had hit Miss T's account. Even more surprising is despite Miss T's repeatedly claiming that the money was used for a venue hire – to date she still hasn't provided any evidence to support her explanation, such as a contract, or invoice with the venue. And she hasn't clearly explained why she can't provide anything. If this was a legitimate transaction, I'd expect Miss T to be able to provide documentation to back up what she's said. Especially given her close link to B. But she hasn't done so.

Miss T has also suggested that the money she sent to S and then used to make a purchase was already money that she had in her account before the fraudulent funds credited the account. But from looking at Miss T's account statement that's not right. Miss T had a balance of just over £800 on 11 December 2023. B then sent her £9,800 and Miss T sent B £4,000 back. She then went on to make a series of transactions including sending S just over £800. Each withdrawal is presumed to be a return of all or part of the oldest deposit. The result of that is that the oldest deposit is withdrawn first, or the oldest is paid first.

I am satisfied Miss T received and moved on fraudulent funds in her account. It therefore follows, that when Miss T transferred money out of her account back to B, that money would have been deducted from money that was already in her account – and therefore was her own money. This means that the money she sent to S, withdrew at the ATM and spent for the alleged venue hire didn't rightfully belong to her and was the proceeds of fraud.

The central issue which I need to decide is whether or not Nationwide acted fairly when it registered a Cifas marker against Miss T. And as neither party has provided anything new for me to consider, I see no reason to depart from my provisional findings. I remain of the view that this complaint should not be upheld for the reasons set out in my provisional decision, which are repeated above and form part of this decision.

In conclusion, I am satisfied that Nationwide was justified in placing a Cifas marker against Miss T's name. On this basis I don't think it would be fair or reasonable to ask Nationwide to pay Miss T compensation. So, I won't be asking Nationwide to do anything further here.

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 Miss T to accept or reject my decision before 26 September 2024.

Sharon Kerrison
Ombudsman