

The complaint

Mr W complains that Nationale Westminster Bank Plc unfairly registered a marker about him at Cifas, the national fraud database. He is also unhappy that NatWest closed his account.

What happened

Mr W had a current account with NatWest which he used to receive his wages and everyday spending.

On 14 July 2022, six payments totalling just under £5,000 were made into Mr W's account, from three separate individuals, I will refer to as O, S and F. After the payments were received, £4,000 was withdrawn in cash at a branch, with further withdrawals being made at cash machines. And some of the funds were spent at retailers.

NatWest were notified by another bank that the payments Mr W had received from O, S and F were fraudulent and that their customers had been the victims of a scam.

NatWest emailed Mr W and asked him to explain the payments from O, S and F. And to provide evidence of his entitlement to the funds. Mr W didn't respond.

Following this NatWest decided to place a fraud marker against Mr W's name with Cifas. This was for misuse of a facility in relation to retaining fraudulent funds. NatWest also decided to close Mr W's account immediately.

Mr W complained to NatWest and asked them to remove the marker. He told NatWest that he regretted what had happened and had shared his bank account details with another person. In response, NatWest reviewed everything including what Mr W had told them. After doing so, it said it wasn't willing to remove the marker. But acknowledged that it should have asked Mr W for more information even though it wouldn't have changed the outcome.

Unhappy with this response Mr W brought his complaint to our service. He wants NatWest to remove the marker. He said the marker has led to the closure of bank accounts and the lack of a bank account means he may lose his job.

An investigator looked into Mr W's complaint and asked NatWest and Mr W for some more information about what had happened. Mr W told the investigator that he hadn't known anything about the fraud on his account, and although he suspected who was responsible, he couldn't be sure. He said he hadn't shared his bank PIN with anyone. Mr W provided copies of his pay slips to show he'd used the account to receive his wages and a letter from the police to show that no further action was being taken against him in relation to the fraudulent money that had been paid into his account and spent.

After reviewing everything the investigator said that NatWest hadn't done anything wrong when it had recorded the marker against Mr W's name. And closed his account. So, they didn't uphold the complaint.

NatWest agreed with what the investigator said. Mr W didn't. He wants the marker removed and said that is impacting his ability to work and his everyday life.

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.

The marker that NatWest filed with Cifas against Mr W is intended to record that there's been a 'misuse of facility' – relating to using his account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr W 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.*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr W'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 NatWest should be giving the account holder an opportunity to explain what was going on.

Here Mr W received funds into his account that were confirmed by a third-party bank to have originated from fraud. 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.

In July 2022, NatWest told Mr W that they had concerns about the six payments that had been paid into his account, from O, S and F. NatWest asked Mr W to send them evidence of where the funds had come from and proof that the money belonged to him. Mr W didn't respond to NatWest.

Whilst I'm satisfied NatWest did provide Mr W with an opportunity to explain why he'd received the money from Mr W, I think it could have explored things a little further. With this in mind I can see the investigator asked Mr W to provide any information he had about his entitlement to the money he received from O, S and F and what he did with it.

In response, Mr W provided copies of his wages slips and a copy of a letter from the police, which confirmed Mr W's account had been used to receive and spend fraudulent funds. Mr W also told the investigator that he had some idea who was responsible but didn't know anything about the fraudulent activity on his account.

Based on Mr W's response, I think if NatWest had asked Mr W about the payments it's likely that he would have provided the same information to them.

So, I need to consider whether based on all the information including the evidence Mr W has submitted to us, whether NatWest 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 NatWest that confirms they were notified by another bank that the money Mr W received from O, S and F originated from fraud.
- Mr W has told us that he doesn't know anything about the fraudulent funds that were paid into his account – although he says he has an idea who might be responsible. He's said that he just noticed the money being paid in and then it was gone. Mr W has also told us that he hadn't shared his bank PIN and bank card with anyone else – which would have been needed to make the withdrawals of the fraudulent funds in branch, to use cash machines and make purchases.
- I note that Mr W provided a different explanation to NatWest. In an email to NatWest in April 2024, Mr W told NatWest that he regretted what he'd done and shouldn't have shared his bank details. This leads me to doubt the credibility of Mr W's version of events and suggests to me that Mr W was potentially involved in fraudulent behavior.
- I can also see that after Mr W received the payments from O, S and F they were immediately withdrawn as cash and spent at retailers. Mr W hasn't disputed the purchases. This activity suggests to me that Mr W was potentially involved in money laundering. And benefitted from the money he received from O, S and F.
- If Mr W had been the unwitting beneficiary of fraudulent funds, I would've expected him to alert NatWest at the time in order that his account could be safeguarded against fraud. But I haven't seen that he did so.
- Mr W has explained he'd given out his bank details and that he regrets doing so. That may well be the case. But Mr W hasn't provided any explanation about why he shared his bank details. And he hasn't suggested that he was under the impression that the purpose of him doing so was legitimate. So, based on the available evidence, I think it's more likely than not that Mr W was witting and more than likely than not, the transactions that followed the fraudulent funds being paid into Mr W's account, were made by Mr W or someone he shared his PIN with.
- I've considered what Mr W 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 NatWest 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 spending it. And that he reasonably knew this wasn't a legitimate activity. So, I'm not convinced Mr W is an innocent party. I think the evidence shows that Mr W 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. Mr W has received funds into his account that have originated from fraud. He has been unable to provide any corroborative evidence to support his testimony that he 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, lack of evidence of communications leading up to this arrangement, and conflicting explanations provided by Mr W and Mr W to NatWest 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 Mr W was likely complicit in this. So, while I acknowledge NatWest didn't ask Mr W very much about the money (as it should have) and could have done more to investigate the wider circumstances

of the money Mr W received and given Mr W more of a chance to defend his 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 NatWest to remove the marker or pay Mr W compensation.

I turn then to the closure of the account. It's generally for banks and financial businesses to decide whether or not they want to provide, or to continue to provide, account facilities to any particular customer. Unless there's a very good reason to do so, this service won't usually say that a bank or financial business must keep customer or require it to compensate a customer who has had their account closed.

NatWest is also entitled to set their own policies and part of that will form their risk criteria. It is not in my remit to say what policies or risk appetite NatWest should have in place. I can however, while considering the circumstances of individual complaints, decide whether I think customers have been treated fairly.

As long as banks and financial businesses reach their decisions fairly, it doesn't breach law or regulations and is in keeping with the terms and conditions of the account, then this service won't usually intervene. They shouldn't decline to continue to provide account services without proper reason, for instance of unfair bias or unlawful discrimination. And they must treat new and existing customers fairly.

NatWest have relied on the terms and conditions when closing Mr W's account. I've reviewed the terms, and they explain that NatWest can close an account for any reason by giving two months' notice. In certain circumstances, NatWest can also close the accounts without notice, which is what happened here.

For NatWest 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 that the bank has provided, I'm satisfied that NatWest did. And that it was entitled to close the account as it's already done. So, I can't conclude that NatWest treated Mr W unfairly when it closed his account.

In summary, having considered everything, while I appreciate Mr W's strength of feeling and why he feels he's been treated unfairly, I'm not persuaded NatWest acted unreasonably or unfairly in the circumstances. So, I won't be asking NatWest to do anything.

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 W to accept or reject my decision before 13 March 2025.

Sharon Kerrison
Ombudsman