

## **The complaint**

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

## **What happened**

Mr D had a basic account with Nationwide which he'd opened in 2019.

On 25, 26 January 2024 and 5 February 2024, three payments of £1,000, £500, and £500 was made into Mr D's account, from an individual I will refer to as Mr M. After each payment was received the money was withdrawn in cash and transferred to another account in the name of an individual I will refer to as G.

Nationwide were notified by another bank that the payments Mr D had received from Mr M were fraudulent and that their customer had been the victim of a scam.

Nationwide contacted Mr D and asked him to explain the payments from Mr M. And to provide evidence of his entitlement to the funds which included copies of Mr M's bank statements. In response Mr D explained that Mr M was his friend, who stayed with him whilst he attended university in Scotland. Mr D said he had paid Mr M's university fees, using G's credit card, and the payments he had received from Mr M in January and February 2024, was Mr M repaying him what he had lent him.

Mr D provided copies of Mr M's payslips to Nationwide to show the source of the money. He said that the payments were above board and he'd done nothing wrong. Nationwide asked Mr D to provide evidence to support his explanation, but Mr D said he couldn't provide any communications between him and Mr M, as everything had been arranged in person at his house. Mr D also sent Nationwide an email written by Mr M that supported Mr D's explanation and screenshots of requests for tuition payments from a university.

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

Mr D complained to Nationwide and asked them to remove the marker. In response, Nationwide reviewed everything including what Mr M had told them. After doing so, it said it wasn't willing to remove the marker. But acknowledged that it should have asked Mr D for more information even though it wouldn't have changed the outcome. Nationwide apologised and paid Mr D £100 compensation for its mistake.

Unhappy with this response Mr D brought his complaint to our service. He wants Nationwide to remove the marker. He said the marker has led to the closure of credit card accounts he had. And newly opened accounts he applied for also being closed. He maintained that he hadn't done anything wrong and shouldn't be held liable for the actions of Mr M.

An investigator looked into Mr D's complaint and asked Nationwide and Mr D for some more information about what had happened. After reviewing everything the investigator said that Nationwide hadn't done anything wrong when it had recorded the marker against Mr D's name. And closed his account. So, they didn't uphold the complaint. Nationwide agreed with what the investigator said. Mr D didn't. He wants the marker removed and said that is impacting his credit file.

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 Nationwide filed with Cifas against Mr D 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 D 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 D'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 Mr D received funds into his 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 Mr D's account directly, from their source, but were transferred to Mr D's account from someone who did receive the funds from the victim – in this case Mr D's friend Mr M.

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 February 2024, Nationwide told Mr D that they had concerns about the three payments that had been paid into his account. Nationwide asked Mr D to send them evidence of where the funds had come from and proof that the money belonged to him. In response Mr D sent Nationwide copies of his and Mr M's payslips. And he later sent them an email from Mr M which said Mr M was repaying Mr D for money he'd lent him. But he didn't provide anything else.

Whilst I'm satisfied Nationwide did provide Mr D with an opportunity to explain why he'd received the money from Mr M, I think it could have explored things a little further. With this

in mind I can see the investigator asked Mr D to provide any information he had about his entitlement to the money he received from Mr M and what he did with it.

In response, Mr D provided copies of G's credit card statements which showed payments being made to a university in January 2023, screenshots of messages from the same university asking for tuition fees to be paid, and copies of his credit file. Mr D maintained that Mr M was repaying him money he had lent him for his tuition and that he didn't have any evidence of communications setting out the arrangements as these had been done in person.

Based on Mr D's response, I think if Nationwide had asked Mr D 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 D 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 Mr D received from Mr M originated from fraud.
- Mr D has explained why he received the payments from Mr M – that he had previously paid Mr M's university fees using G's credit card and was simply being repaid. And he has sent a screenshot of an email Mr M sent Nationwide to support his explanation. The evidence he has supplied simply shows that the money was sent by Mr M – which isn't in dispute. I've considered this evidence, but I'm not persuaded that this shows Mr D was entitled to the money.
- Mr D hasn't provided any evidence about his arrangement with Mr M which would support his explanation, such as any messages between him and Mr M prior to him receiving the funds. I appreciate Mr D says everything was arranged in person. But I find the fact there is no evidence at all just isn't credible. Especially given the amount of money involved. If this was a legitimate transaction, I'd expect there to be some evidence that led up to this arrangement which Mr D could provide. But nothing has been provided.
- I note that Mr M provided a different explanation to Nationwide. Mr M told Nationwide that it was him that had lent Mr D money so that he could clear his credit card. And that Mr D had then repaid him by paying his university fees. This leads me to doubt the credibility of Mr D's version of events and suggests to me that Mr D was potentially involved in fraudulent behaviour.
- I also find it odd looking at the university screen shots that the amounts don't match the amounts Mr D received from Mr M.
- I can also see that after when Mr D received the payments from Mr M it was immediately withdrawn as cash and transferred to G. This activity suggests to me that Mr D was potentially involved in money laundering. And benefitted from the money he received from Mr M.
- If Mr D had been the unwitting beneficiary of fraudulent funds, I would've expected him to alert Nationwide at the time in order that his account could be safeguarded against fraud. But I haven't seen that he did so.
- I've considered what Mr D 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 spending it. And that he reasonably knew this wasn't a legitimate activity. So, I'm not convinced Mr D is an

innocent party. I think the evidence shows that Mr D 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 D 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 D and Mr M to Nationwide 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 D was likely complicit in this. So, while I acknowledge Nationwide didn't ask Mr D very much about the money (as it should have) and could have done more to investigate the wider circumstances of the money the payment Mr D received and given Mr D 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 Nationwide to remove the marker or pay Mr D compensation.

Nationwide also closed Mr D's account. Mr D had a basic bank account with Nationwide, which he opened in 2019. These types of current account are intended for people who don't have and don't qualify for standard current accounts. In order to be eligible for a payment account with basic features an individual shouldn't hold a payment account with any United Kingdom credit institution that has at least the features of a basic bank account.

When closing a basic account, along with the terms and conditions of the account, Nationwide also had to consider the provisions of the Payment Accounts Regulations Act 2015 (PAR's 2015). Amongst other things they set out when an account provider can close a basic bank account.

The terms and conditions 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 Mr D'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 Mr D'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 Mr D. I'm also satisfied this conduct meets the definition of the criteria set out under the PAR's 2015, which allow for immediate closure. This means I won't be asking Nationwide to reopen Mr D's account.

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

reject my decision before 10 February 2025.

Sharon Kerrison  
**Ombudsman**