

The complaint

Mr L complains Nationwide Building Society registered a fraud marker at Cifas, the national fraud database. He doesn't think it has treated him fairly.

What happened

Mr L held an account with Nationwide. On 2 and 3 April 2024 it received some small payments by bank transfers. Shortly afterwards, the payments into the account were identified as fraudulent because the banks from where they had come, notified Nationwide that their customers had been the victim of a purchase scam.

Nationwide restricted the account and requested some information from Mr L about his entitlement to the funds. Mr L said he had been selling cryptocurrency and the money that had come in was for that. But following a review of the activity, Nationwide issued a notice to close the account immediately. It also loaded a misuse of facility marker at Cifas against Mr L.

Mr L complained. He said he'd not done anything to cause this. But Nationwide didn't believe it had made a mistake.

Mr L didn't think he'd been treated fairly, so he referred his complaint to us. In doing so, he said:

- The marker had a detrimental impact on his day-to-day life, and he wanted it removed. He'd had a job offer withdrawn because of it.
- He had genuinely been selling cryptocurrency on a trading platform and been approached by someone who agreed to buy it. He'd given this person his Nationwide account details so that they could pay him. As far as he had been aware, the payments that had come into his account were in relation to that.
- He became concerned when the payments were coming in increments and once Nationwide restricted his account. He'd challenged the person about this and enclosed supporting evidence to show he'd lodged a case with the trading platform about the buyer.

One of our investigators reviewed the evidence Mr L had sent him of the conversation between him and buyer about the sale of the cryptocurrency. Based on this and some other evidence, he was satisfied Mr L was telling the truth about what he understood the payments were for. He thought Mr L had been misled as to the true source of the funds. The investigator sent this evidence to Nationwide, recommending it remove the marker and pay Mr L £300 compensation, plus £25 (an offer it had made earlier for terminating a call).

However, Nationwide didn't accept the recommendation (aside from the £25 payment). It said its decision to the load the fraud marker and close the account had nothing to do with Mr L selling cryptocurrency but had been based on the fact that it had received fraud reports from different banks in relation to three unconnected customers to say that they had all been scammed. It was satisfied this was enough for it to take the steps that it had.

After some back and forth, Mr L said he'd be prepared to accept the investigator's recommendation to resolve the complaint. But because Nationwide disagreed, the complaint was put forward for a 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.

The marker that Nationwide has filed 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, it's not required to prove beyond reasonable doubt that Mr L is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance 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 business must first be able to show that fraudulent funds have entered Mr L's account, whether they are retained or pass through the account. Secondly, the business will need to have strong evidence to show that Mr L was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show complicity. To meet the standard of proof required to register a fraud marker; the business must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account to understand their level of knowledge and intention.

So, I need to decide whether I think Nationwide has enough evidence to show fraudulent funds entered Mr L's account *and* he was complicit. I'm satisfied it hasn't met the threshold. I'll explain why.

- It's correct that Nationwide received fraud reports from third-party banks saying that funds which entered Mr L's account were as a result of a fraud. But he doesn't dispute this either.
- However, I'm not persuaded Mr L was complicit in the scams that led to the payments coming into his account. I say this because, at the same time, the chat with the person that he was selling cryptocurrency to shows that they were sending the payment into his Nationwide account (that's the details Mr L gave). The chat goes on to show that Mr L was growing impatient with the buyer about the fact that he hadn't had all the money still. Mr L also has a screen shot where he shows the buyer what he has received so far. And I can see that he challenged the person about this at the time and when his account got restricted. A case was also then lodged with the trading platform who cancelled the transaction after the buyer failed to provide his bank statements to show what he'd paid and where from. I believe the evidence most likely suggests that it was the buyer that was scamming customers in relation to the tickets and using the funds to pay for the cryptocurrency but unbeknown to Mr L. I've checked the dates of these chats, and the timeline corresponds with the payments the buyer said he had made.
- The reports were certainly enough to trigger suspicion and an investigation, but they aren't on their own rigorous to show Mr L was complicit in committing a fraud. So, I

don't think Nationwide had enough to record the marker and maintain it, particularly given what Mr L has provided. In the circumstances, I will be directing Nationwide to remove the marker. I understand Nationwide might remain unhappy with how the account was used. But it is the case that it has now closed it.

- I'm sorry to hear of the affect this had on Mr L. I note what he's said about a job offer being withdrawn. I can see why he'd ask for loss of wages but I think that is a step too far removed, as the potential employer could have asked Mr L for some more information about the circumstances as to how the marker arose, rather than withdraw the offer immediately. Overall, I don't think it would be fair to hold Nationwide fully responsible for this. I recognise that the marker and the immediate closure of the account without notice caused Mr L trouble and upset. Our investigator recommended £300, plus the additional £25. Ultimately, I need to also say how best the complaint should be resolved. As Mr L has confirmed he's happy to accept this, I'll be directing this as a resolution to help bring matters to a close.

My final decision

My final decision is Nationwide Building Society should remove the fraud marker from Cifas and from any other fraud database that it may have loaded on. It should send Mr L written confirmation once the entries have been removed. Finally, it should also pay him £325 in full and final settlement of the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 February 2025.

Sarita Taylor
Ombudsman