

complaint

Mr T is unhappy that National Westminster Bank PLC added a Credit Industry Fraud Avoidance System (CIFAS) marker against his name. He says this had led to him having his bank account closed. And he wants NatWest to remove his CIFAS marker.

background

Mr T opened an account with NatWest in 2014.

On the 30 July 2018 one payment of £2,300 was made into Mr T's account.

On the 31 July 2018 NatWest received notification from another Bank, I'll call C, who said their customer didn't authorise the payment to Mr T's account. Before NatWest could retrieve the funds the majority of the money was spent via ATM and point of sale transactions. Only £0.99 remained in Mr T's account. As a consequence NatWest decided to close his account.

NatWest also thought that Mr T had misused his account so applied a CIFAS marker. He complained to NatWest asking for the marker to be removed. Mr T initially told NatWest:

- he has no knowledge of the deposit of £2,300
- he didn't authorise any of the withdrawals or point of sale transactions after the deposit
- he found out his account was closed two weeks later when he received a text message
- he lost his card on the 11 July 2018 but didn't report it as he was very busy and uses his mobile phone to make payments
- he didn't write his PIN down or tell it to anyone

Mr T later appealed NatWest's outcome and said he'd previously disclosed his PIN to his friends and family – but he maintained he wasn't aware of the fraudulent payment and didn't carry out the transactions.

One of our investigators looked into Mr T's complaint and asked both Mr T and NatWest further questions.

NatWest provided evidence that Mr T's mobile banking was accessed around 30 minutes before and less than five minutes after the fraudulent transfer. Also a payment of £10 was transferred out of Mr T's account soon after the fraudulent transfer. And the IP addresses used were the same as that for the *get cash* transactions before the fraudulent credit.

Mr T provided evidence that his account number and sort code, PIN, online banking details and passwords were written in the notes on his phone. And he thought this might be how a fraudster got hold of his details.

Our investigator didn't uphold the complaint – having looked at the circumstances of the events and the way in which the fraudulent payment was used she thought that NatWest had sufficient evidence to load the CIFAS marker.

Mr T didn't agree with the investigator's opinion and asked for his complaint to be passed to an ombudsman for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I've come to the same conclusion as the investigator. I'll explain why below.

NatWest said it applied the CIFAS marker because bank C said their customer didn't authorise the payment made in Mr T's account. So I've looked at whether NatWest was fair to apply the marker, based on the evidence it had and the investigation it carried out and what the rules say about applying such markers.

CIFAS guidance says the business must have carried out checks of sufficient depth to meet the burden of proof set by CIFAS, which at that time was that NatWest needed to have enough information to make a formal complaint to the police or other relevant law enforcement agencies. And that any filing should be for confirmed cases of fraud, rather than mere suspicion. In addition, CIFAS guidance set out businesses are expected to retain the evidence they rely upon when applying a CIFAS marker for at least six years.

Having reviewed Mr T's account of events and the evidence NatWest have provided, I'm satisfied that NatWest have sufficient evidence for the CIFAS marker to be recorded on his file. In coming to this view I've taken into account the following reasons:

- NatWest have provided evidence to show the inward payment received on the 30 July 2018 was fraudulent.
- Mr T says he lost his card on the 11 July 2018 but he didn't inform NatWest until after being notified of the account closure.
- I think it's unlikely that a fraudster would obtain Mr T's card on the 11 July 2018, but wait until the 30 July 2018 before using the card and transferring fraudulent funds in.
- Mr T's shown his account number, PIN and online banking details/password were saved on his phone. For a fraudster to gain access to this they'd have needed to obtain Mr T's phone, been aware the details were stored on his phone and where, and either used his fingerprint or password to access it. I don't find this explanation likely.
- There were a number of mobile banking log ins – from Mr T's device – immediately prior to and after the fraudulent funds were transferred in.

Mr T has explained that if CCTV of the ATM withdrawals was obtained it would show he didn't make them. And it would prove he wasn't aware of the fraudulent activity. I'm afraid I can't agree with Mr T here. It's possible that CCTV might have identified that someone other than Mr T made the withdrawals. But Mr T didn't have to make the withdrawals personally. And I don't think it's plausible that a fraudster obtained Mr T's personal details without his knowledge.

Taking everything into account, I find that NatWest have met the burden of proof required by CIFAS to add the marker. So I'm not going to ask them to remove the CIFAS marker.

my final decision

My final decision is I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 30 January 2020.

Jeff Burch
ombudsman