

complaint

Mr A complains National Westminster Bank Plc unfairly placed a Credit Industry Fraud Avoidance System (CIFAS) marker against his name. He wants NatWest to remove the marker.

background

Mr A had a current account and savings account with NatWest.

Below is a list of the relevant transactions

Date & time	Credit	Debit	Transaction details
09/03/2018 23:28	£500		Bank transfer from bank B into Mr A's current account
10/03/2018 01:56	£500		Bank transfer from bank B into Mr A's current account
10/03/2018 13:40		£900	Branch – cash withdrawal using Chip and PIN
11/03/2018 05:11	£3,500		Bank transfer from bank B into Mr A's current account
12/03/2018		£3,150	Mr C ref: overheads - bank transfer in branch using Chip and PIN
12/03/2018		£250	Mr C ref: overheads - bank transfer via mobile banking to Mr C's account
13/03/2018 11:18	£2,500		Bank transfer from bank B into Mr A's current account
13/03/2018		£200 £200 £200 £200 £200 £200 £200 £200 £200 £200 £200	11 Betting shop withdrawals using CHIP and PIN
TOTAL	£7,000	£6,500	

On 27 March, NatWest were contacted by bank B. Bank B said their customer did not authorise the four payments made into Mr A's account on 9, 10, 11, and 13 March 2018.

On 28 March 2018, NatWest contacted Mr A and spoke to him about the payments into his account. Mr A told NatWest that they were from a friend, who I will refer to as Mr C, who didn't have access to his bank account card. To help Mr C he'd allowed him to pay money into his account. And then Mr A transferred the money back into Mr C's personal account. Mr A told NatWest that the money had come from Mr C's joint business account.

On 29 March 2018, NatWest removed the money left in Mr A's account, £1,405.01 and returned it to the sending bank. NatWest made a decision to close Mr A's account but allowed Mr A to withdraw the remaining balance in his savings account.

On 4 April 2018, Mr A rang NatWest to make a complaint. During the call he told NatWest that 'I took a payment through my sort code and account number in March, and I transferred it back to my friend, I done him a favour. I took it out from the bank myself.' Later in the call Mr A told NatWest that he had been a 'victim' and believed Mr C had used him as a 'money mule.'

Mr A says because NatWest applied the CIFAS marker, he hasn't been able to open another bank account, which has caused him a great deal of trouble and upset. In particular, Mr A says he's had problems being able to get a job because he can't provide any potential employer with a bank account. So he wants NatWest to remove the CIFAS marker.

An investigator looked into Mr A's complaint and asked him some additional questions about the four payments. Mr A told the investigator that at the time he sold trainers via an online platform and through word of mouth. He said he'd met a customer, Mr C, and sold him two pairs of trainers. Mr A explained that prior to the four payments he'd sold Mr C trainers and a shoe cleaning kit. He said his contact with Mr C was mainly via phone and WhatsApp (a messaging service).

Mr A said in March 2018, he sold Mr C a pair of trainers for £100. But Mr C *accidentally* transferred too much money to Mr A's account. And instead of £100 he paid £1,000 to his account, in two separate payments of £500. So Mr A withdrew £900 from a branch, met Mr C and gave him the £900 and trainers.

Following this, Mr A said he sold Mr C another pair of trainers and the same thing happened again. Except this time Mr C deposited £3,500 into Mr A's bank account. Mr A says he took out the cost of the trainers (£450) and transferred the balance, £3,150 back to Mr C.

Mr A told the investigator that the same thing happened a third time on 13 March 2018, when Mr C transferred £2,500 into his bank account. Mr A explained that on this occasion Mr C contacted him and asked him to withdraw the whole amount in cash. Mr A says at first he didn't agree. But Mr C came to his home address. Mr A said Mr C wouldn't leave him alone and was pestering him. So he agreed to withdraw the money at a nearby betting shop and give it to Mr C. Mr A says at the betting shop he used his card in the cashiers terminal and entered his CHIP and PIN repeatedly. He then gave Mr C the cash.

The investigator asked Mr A why he had provided a different explanation to NatWest. Mr A said when he first contacted NatWest he didn't explain that the payment was for goods he'd provided as he'd been receiving letters from HMRC and didn't want to get in to trouble for not paying tax from the sales he made selling footwear.

The investigator asked Mr A to provide evidence of his footwear sales, his contact with Mr C and letters from HMRC regarding tax payments. Mr C said he was no longer able to contact Mr C. And he wasn't able to provide any copies of letters he'd received from HMRC or any invoices for sales of trainers.

Mr C did provide screenshots of some Whatsapp messages he said were from Mr C. The messages show Mr A sent Mr C a screenshot of his bank statement on 11 March 2018. There are also missed calls from Mr A to Mr C on 12 and 13 March 2018. On 18 March

2018, Mr C sent Mr A several messages asking where he is. There's also a message on 24 March 2018 threatening Mr A.

The investigator didn't think NatWest had done anything wrong when it applied the CIFAS marker. She said Mr A had received fraudulent funds into his account over a period of days in four separate transactions, which had been moved out of the account quickly. And whilst she accepted that mistakes can happen, she thought it was unlikely that Mr A would've received an overpayment for trainers from the *same* customer on *three* occasions. Mr A disagreed and asked for an ombudsman to review his complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Prior to making my decision I also contacted Mr A for some more information.

NatWest says it applied the CIFAS marker because Mr A received fraudulent funds into his 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.

The bar for recording a CIFAS marker is a high one. The bank must have a good reason to believe it could have suffered a loss and/or it reasonably believes it has grounds to press criminal charges as a result of the activity on the account. This should be more than just a suspicion or concern.

It follows that the bank must have carried out sufficient checks to satisfy this requirement. Given the impact a CIFAS marker can have on someone, the bank is expected to keep a record of these checks so it can evidence the decision it reached to record the CIFAS marker.

I've considered the information NatWest has provided to support its actions. This includes the information it received from bank B on 27 March 2018, which alerted NatWest that the £7,000 which was paid into Mr A's account between 9 and 13 March 2018 was fraudulent. And that their customer hadn't authorised the payments.

I can see that NatWest spoke to Mr A on 28 March 2018, to give him an opportunity to explain the circumstances surrounding the payments into his account. From looking at the contact notes, I can see that Mr A told NatWest the payments were from 'a friend who didn't have access to his card, so allowed him to place the funds into his account...and believed it had been sent from a joint business account and that's why the names were different on his statement.' But based on the information from bank B, Mr A's explanation wasn't correct. Taken together, I think the information NatWest relied upon to record the marker, did provide them with a reasonable cause for concern.

I've also considered what Mr A told our investigator about the payments into his account. Mr A's explanation was different to what he told NatWest. He told the investigator that he'd sold Mr C trainers and that Mr C had simply over paid him, not once or twice, but on three separate occasions. However, despite being asked by our investigator, Mr A hasn't been able to provide any evidence of selling footwear to Mr C. So whilst I can accept mistakes such as overpayments can happen, I think it's unlikely this happened with the frequency Mr A suggested.

On 4 April 2018, during a phone call, Mr A told NatWest that he'd been a '*victim*' and after completing some research realised he'd been used as a '*money mule*' by Mr C.

I've already said that before reporting a customer to CIFAS, a business needs to be satisfied that the circumstances and issues it's concerned about meet certain criteria. There are a number of different criteria, but they include whether a business could make a formal complaint to the police or other law enforcement agency and whether there are reasonable grounds to believe that a fraud or financial crime has been committed. NatWest has confirmed that it feels that the reasons it reported Mr A to CIFAS met these criteria.

It's not in dispute that Mr A received fraudulent funds into his account. I've not seen any evidence that Mr A tried to cancel these credits or disputed them with NatWest. And despite Mr A's concern about being used as a money mule I've not seen any evidence that Mr A contacted the police. I also haven't seen any evidence that supports Mr A's explanation that his interaction with Mr C was purely a business transaction based on the sale of trainers. Instead the evidence shows Mr A retained some of these fraudulent funds, approximately £500. And he provided an explanation to NatWest about the payments which he knew was untrue.

I spoke to Mr A on the telephone prior to coming to my decision. I asked him if he could provide *any* evidence of his trainer sales business. Including the sales he'd made to Mr C. Mr A explained that at the time, he had sold trainers using an online platform but this account was no longer active. So he didn't think he would be able to provide me with any evidence. I asked him to explain why he'd given NatWest a different explanation to what he'd told our investigator. Mr A said he was concerned about tax implications as he'd been receiving letters from HMRC. I asked him to provide me with copies of the letters. But he said he had been unable to locate any. And that HMRC had been very difficult to contact.

Mr A confirmed that he had authorised all of the transfers and withdrawals from his account to Mr C. He explained that on one occasion he went with Mr C to a betting shop. And that he put his card into the cashier's terminal, entered his PIN a number of times and gave the cash to Mr C. Mr A said he did this because Mr C had come to his address wanting the money he'd paid into his account and the banks had closed for the day.

I asked Mr A why he didn't question the transfers into his account. Mr A said he did. But that Mr C kept putting money into his account and pestering him. Mr A said he just wanted Mr C to go away and leave him alone. And that Mr C had threatened him. So he withdrew some of the money and authorised transfers to Mr C's account.

Mr A said he was no longer in contact with Mr C. And said he hadn't reported the matter to the police because he'd transferred the amounts back to Mr C's account. So he didn't think Mr C had done anything '*dodgy*' as the money was going back into his account. Mr A said he didn't report Mr C to the police for threatening him as he thought the matter was dealt with once he'd given Mr C the money. .

I've thought carefully about what Mr A has said. Having done so, I think it's possible that Mr A did feel threatened by Mr C as he's described. But I also have to take into account that Mr A didn't report this to the police. It's also possible that Mr A did sell Mr C some trainers. But despite being asked, Mr A hasn't been able to provide any evidence of these sales such as invoices, adverts or stock. I've also kept in mind that Mr A provided different explanations

to the bank and our investigator about his involvement with Mr C and the reason why the money was paid into his account.

I'm satisfied that fraudulent funds were paid into Mr A's account. Mr A has confirmed he authorised the removal of these funds. And that he kept £500 of the fraudulent funds to cover the costs of the trainers he says he sold to Mr C. Having reviewed all the available information here, I agree that NatWest's reasons met the criteria too – so I think it's fair that it reported Mr A to CIFAS. And I'm not going to ask NatWest to remove the marker.

account closure

A bank is entitled to close an account with a customer just as a customer may close an account with a bank. But before a bank closes an account, it must do so in a way, which complies with the terms and conditions of the account.

The terms and conditions of the account – which both NatWest and Mr A had to comply with, say that under certain circumstances it could close Mr A's accounts immediately. However, I note that NatWest wrote to Mr A and gave him 14 days' notice. I think this is a reasonable amount of time for Mr A to make alternative banking arrangements. So it's entitled to close the accounts as it seems it's already done.

my final decision

For the reasons I've explained, I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 16 May 2019.

Sharon Kerrison
ombudsman