

The complaint

Mr A has complained that Nationwide Building Society registered a marker against him at CIFAS, the national fraud database.

What happened

In July 2019, Mr A received £300 from a victim of fraud, which he withdrew in cash. Two weeks later, he received £200 from the victim, which he sent on to an associate, who then withdrew it in cash.

Nationwide received an official report that the victim had been defrauded into paying Mr A. They blocked the account. Mr A had said he was receiving money to pay for his wedding, so Nationwide asked him for invoices for these wedding costs, and statements from the sender. But Mr A didn't provide this. Nationwide called Mr A to discuss the matter, but when asked about the fraudulent payments he claimed the line was cutting out due to him being on a train, and the call ended. The call handler noted that the signal had been perfectly fine, and when they called him back his phone rang out instead of being unable to connect. Mr A didn't answer Nationwide's attempts to call him back, and didn't contact Nationwide himself. Nationwide closed Mr A's account and registered a marker against him at CIFAS.

In 2023, Mr A complained. He says Nationwide never gave him a chance to explain himself. He now says he'd assumed the money was from his friend who owed him, but it actually came from someone who'd randomly paid him by mistake. He says in the urgency to pay his wedding costs, he hadn't checked this. He doesn't have any evidence of lending this money as he says it was for a share of rent, though there's no rent payments on his statements. He also has no evidence of the friend repaying him, saying it was received in cash. He has no invoices or receipts from his wedding, and no marriage certificate as he says it was a religious wedding.

Our investigator looked into things independently and didn't uphold the complaint. Mr A's representatives appealed, so the complaint's been passed to me to decide.

I sent Mr A and Nationwide a provisional decision on 19 March 2024, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In doing so, I have read and taken into account everything which both sides have sent me. But I won't comment on every single point – we're an informal alternative to the courts and don't necessarily address things on a point-by-point basis. Further, some of the arguments that Mr A's representatives sent appear to have been copied and pasted from previous decisions of mine, which were decisions on cases which were unrelated to this one and which had substantially different circumstances. And so many of those arguments are not relevant in this particular case. I will focus my decision on what I've found to be the key points of this case.

In order to register this marker, Nationwide were not required to prove beyond all reasonable doubt that Mr A had done something wrong. They did need to have reasonable grounds to believe that he'd misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I currently think Nationwide did have sufficient grounds to register this marker. I'll explain why.

Nationwide received an official report from another institution that the money Mr A received came from fraud. This included comprehensive details about how the victim had been defrauded and threatened into paying Mr A.

The activity on Mr A's account is consistent with fraudulent use. For example, Mr A all but emptied his account of his own funds beforehand, limiting his own money from being used to repay the fraud victim. Then when the fraudulent funds came in, he acted quickly to withdraw them or send them on, which meant they couldn't be recovered once the fraud was reported. Mr A had received and paid on other suspect credits shortly beforehand. And Mr A appears to have been the main beneficiary of the fraud.

What Mr A's told us is not plausible. He says the money was sent to him by mistake. But the victim was defrauded into paying Mr A specifically. And the two credits were two weeks apart. Even if I accept that a fraudster could've used Mr A's details by accident, they would not have done so a second time weeks later. And I certainly don't think that a fraudster would deliberately send their proceeds of crime to a random person – that would involve a lot of risk and effort on their part just to give a random person the profits.

While it's possible Mr A may have been waiting for someone to repay him £1,200 in cash, it's not credible that he would think credits of completely different amounts, from a completely different person with a completely different name, paid by a completely different method, would actually be those same repayments. Further, Mr A hasn't produced any substantive evidence which actually shows him lending that money, or paying for the alleged rent, or receiving repayments from the friend. He's only provided unsubstantiated testimony from an alleged friend. And the name on the testimony document isn't even the same name that Mr A gave us.

While Mr A says he spent the fraudulent funds on a wedding, he's not been able to provide any evidence whatsoever of getting married. He has no invoices or receipts for the alleged costs, no marriage certificate, and there are no entries on his statements which reference any wedding. He was only a teenager at the time. And he withdrew the fraudulent funds in cash or sent them on to the personal account of a long-standing payee, who then withdrew them in cash. There's no record of any of it going to wedding costs. So I don't find Mr A's testimony to be plausible. It's not credible that he would have no substantive evidence of his marriage or of paying for his own wedding.

I'm afraid I do need to point out that Mr A's testimony has been contradictory. For example, he previously confirmed that the money was from a debtor friend, and he said it had been unfairly retracted. And he now says Nationwide didn't investigate and didn't give him any chance to explain himself, which is clearly untrue.

On that last point, it is notable that Nationwide made Mr A aware in 2019 that his account was under investigation. And at the time, he wanted his account kept open as that's where his income was paid and he was supposedly paying urgent costs. Nationwide asked Mr A for evidence from the sender and evidence of his wedding costs, yet he didn't provide any. And when they asked him about the fraudulent funds on the phone, he claimed his signal was getting cut off due to being on a train. Yet the staff member noted the signal was fine, and when they called Mr A back the line rang out – meaning he did have signal and was not answering. Mr A then didn't answer Nationwide's calls, nor contact them himself until his complaint four years later. It is not likely or plausible that Mr A would refuse to speak with Nationwide and withhold proof of his innocence when he knew that he was in trouble, that his bank was investigating him, and that his account was being closed when he wanted it kept open. But that does fit very well with the possibility that he had misused his account.

I understand Mr A is unhappy that Nationwide blocked his account. But it was appropriate for them to do so given that he'd received fraudulent funds and they wished to prevent further potential fraud. Nationwide were allowed to do so under the relevant rules and the terms of his account. I appreciate that some of Mr A's direct debits were returned following this. But they would have been returned anyway, as Mr A had not left a sufficient balance in his account to cover those direct debits.

Lastly, Mr A's representatives argued that Nationwide needed to notify him that this CIFAS marker would be placed. They based this on the requirement for a fair processing notice to be made available. But they're mistaken. The fair processing notice is just a notice about how one's data is used, normally provided when the customer first gives their personal details (i.e. at application). This was provided to Mr A as standard when he applied for this account. Nationwide's notice made it clear that they might need to share his data with fraud prevention agencies like CIFAS, and Mr A accepted this to open his account. Nationwide were not required to send a duplicate notice to Mr A when registering this marker. And the principle the representatives quoted makes no requirement to notify the customer when a marker is placed.

In summary, Nationwide received an official and comprehensive report that Mr A had received and spent the proceeds of fraud. Mr A's account activity and other behaviour at the time is consistent with fraud. Mr A appears to be the main beneficiary of the fraud. Mr A's testimony has been implausible and contradictory, and he's been unable to substantively evidence what he says happened, even when it should be straightforward to evidence. The evidence at hand points to Mr A being directly involved in the fraud, whereas I've not found anything which shows or substantiates that Mr A was an unwitting participant.

On that basis, it seems fair that Nationwide blocked Mr A's account, investigated, then closed it and registered a marker against him at CIFAS. This is a difficult message for me to give, and I know it's a difficult message for Mr A to receive. But given the evidence I have so far, and the balance of probabilities, I'm currently unable to reasonably reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 2 April 2024. Nationwide accepted the provisional decision. Mr A's representatives put forward some further points, which I'll talk about below.

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.

Mr A's representatives said that he avoided talking to Nationwide as he was young and didn't know what to answer. But Nationwide's questions would not have been difficult to answer if Mr A's activity had been legitimate. And as discussed before, Mr A was aware that he was in trouble, that his bank was investigating him, and that his account would be closed when he needed it kept open for urgent costs. So it is neither likely nor plausible that he would withhold proof of his innocence and avoid speaking with Nationwide – going so far as to apparently lie about being unable to speak to them – if he was an innocent party. But that does fit very well with the possibility that he was misusing his account, which is also supported by all the other evidence I set out in the provisional decision.

The representatives said Mr A was previously unaware that the sender had complained about the payments, and had since tried to locate them to discuss the matter. But Nationwide made him aware that the payments were under investigation. They tried to discuss the activity and gather evidence from him about it. And as part of the official fraud report, the sender has already given clear and detailed testimony about how they were defrauded and threatened into paying Mr A. As I noted in the provisional decision, it is not likely or plausible that they paid Mr A by mistake separate times, weeks apart.

Lastly, the representatives said that Mr A had never tried to defraud anyone deliberately, and they felt there were too many doubts involved, so they believe I should give Mr A the benefit of the doubt. But I'm unsure what doubts they're referring to; the balance of evidence here is clear. Nationwide received an official and comprehensive report about how Mr A had received and spent the proceeds of fraud. Mr A's account activity and other behaviour supports that he was knowingly involved in the fraud. Mr A appears to have been the main beneficiary of the fraud. Mr A's testimony has been implausible and contradictory, and he's been unable to substantively evidence what he says happened, even when it should be straightforward for him to do so. The evidence supports Mr A being directly involved in the fraud, and there's no evidence to show or substantiate that he was an unwitting participant. I have no reasonable basis on which to give him the benefit of the doubt, not least when his testimony has been clearly untrue in key places.

So while I know this is not the outcome that Mr A was hoping for, I can only reasonably conclude that Nationwide acted fairly in blocking and closing his account, and in registering a marker against him at CIFAS.

My final decision

I do not uphold Mr A's complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 May 2024.

Adam Charles
Ombudsman