

## **The complaint**

Miss M complains that Nationwide Building Society unfairly registered a CIFAS marker against her. CIFAS is the UK's fraud alert service.

## **What happened**

Miss M had accounts with Nationwide.

Between 23 and 26 August 2022, several payments, totalling over £12,000 were made into Miss M's current account, from an individual I will refer to as Mr S. Each payment was immediately transferred to another account held with a different financial business which I will refer to as B. The transfers were made using Miss M's mobile online banking.

Following this Nationwide were notified by other banks that the payments were fraudulent.

Nationwide blocked Miss M's account and decided it needed to look into how she was operating her account. Nationwide sent Miss M a text message asking her to get in touch with them and provide it with information about the payments she'd received into her account. In response, on 5 October 2022, Miss M emailed Nationwide and said that the payments related to the sale of old shoes that she'd sold with the help of a third party. However, she later told Nationwide that the payments into her account related to trading she was doing with the support of an individual she'd met via a social media platform.

Nationwide asked Miss M to provide evidence to support her explanation. But she didn't provide anything. She said that she no longer had any messages between her and the individual who was teaching her how to trade as the social media platform had deleted them. She said she believed the individual was a girl, who was a little older than her, although she'd never seen her, and that the girl had now blocked her from contacting her. She said that she'd been naïve, hadn't done anything wrong and that the girl was still operating on the social media platform offering trading opportunities to other people.

Nationwide reviewed everything and placed a fraud marker against Miss M's name with CIFAS, the Credit Industry Fraud Avoidance System. Nationwide also decided to close Miss M's accounts.

Miss M complained to Nationwide. She said she hadn't done anything wrong and had been duped by the girl into believing she was learning about trading. She explained that due to the marker she was struggling to open another bank account and had ones she'd managed to open closed. She said her mental health had been impacted and she was having trouble sleeping and eating because of the amount of stress and anxiety the marker was causing her. She said she was very worried about her future, as without a bank account she wouldn't be able to receive her student loan, pay rent, or take out any credit to buy a car.

Nationwide looked into Miss M's complaint but didn't uphold it. It said it had loaded Miss M fairly with CIFAS. Unhappy with this response Miss M brought her complaint to our service.

An investigator looked into Miss M's complaint. He asked Miss M about the payments into her account and whether she had any evidence to support her explanation. Miss M said she didn't know the sender of the payments that were made into her account and thought that she was learning how to trade. She said she hadn't benefitted from the money and hadn't made any of the transfers out of her account in August 2022. She accepted that she had allowed her account to be misused. But said she had simply been naïve.

The investigator reviewed everything and said that Nationwide hadn't done anything wrong when it had loaded a marker against Miss M. Miss M disagreed. She wants the marker removed. She said she'd been naïve and simply made a mistake by allowing the payments to come into her account. She said the marker was making it very difficult for her to open a bank account and would impact her future for years to come.

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.

When a business is a member of CIFAS it can record a marker against an individual customer when that customer has used their account fraudulently. This type of marker will stay on record for six years and will usually make it difficult for a customer to take out new financial products as Miss M says she has encountered.

The marker that Nationwide have filed with CIFAS is intended to record that there's been a 'misuse of facility' – relating to using Miss M's account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Miss M 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 such that the member could confidently report the conduct of the subject to the police."*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Miss M'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.

So, I need to consider whether Nationwide have 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 have, and I say this because:

- I've seen evidence from Nationwide showing that other banks notified them that Miss M received several fraudulent payments into her account between 23 August 2022 and 26 August 2022. The payments were for a total of just over £12,000 and were paid into Miss M's account via bank transfers all from the same source – Mr S.
- Miss M has explained she had started corresponding with a girl via a social media platform who had advertised a 'trading opportunity.' She's said that she never met

this girl and doesn't have any evidence to support her explanation because all of the messages she had with this individual have since been deleted by the platform. However, she has said that this individual is still advertising on the same platform, given this information I'd expect Miss M to be able access these posts and provide them to Nationwide and this service. But she hasn't done so. I think this is information she ought to be able to provide – if as she says she can still see them.

- I find it surprising that Miss M thought funds from the individual she met on the social media platform should be paid using a named reference – Mr S, with no evidence of links between this individual and the sender of the funds. Even more surprising is that Miss M didn't question why she was being sent funds in this manner. With this in mind I think Miss M knew or ought reasonably to have known, that her account was being used for fraudulent purposes.
- As soon as the funds hit Miss M's account, they were moved on to another account held with B. Miss M says she never did this. But Nationwide has provided evidence to this service that shows that each transfer was made using Miss M's mobile device, which required her fingerprint to access her online banking. In other words - no payments can be made without completing this security step.
- Miss M hasn't said that she gave her mobile phone to anyone else to use. She's also said that she never met the girl she spoke to via the social media platform. But whoever did the transactions needed physical possession of Miss M's mobile phone and her fingerprint. So, there are discrepancies in what Miss M has told us. Based on the evidence, I think it's likely she was responsible for moving the fraudulent funds quickly through her account and onto another. I think this action is significant. Miss M hasn't offered any explanation for why she did this. I note too that Miss M's online activity increased during this time from her normal use. I think this suggests Miss M was most likely expecting the payments that were paid into her account in August 2022.
- Miss M hasn't provided any evidence about her arrangement with the girl she met on the social media platform which would support her explanation, including why she needed to move the money onto another account, in fact Miss M hasn't given a complete account of how she became involved in the first place and what her understanding of the arrangement or involvement was.
- I've considered what Miss M says about her age and the impact the marker has had on her. But she hasn't described being placed under any duress or being especially vulnerable. In my view I think it's most likely she allowed her Nationwide account to be used for receiving fraudulent funds. And I think she was a willing participant in this and in moving the money on and reasonably knew this wasn't a legitimate activity.

So, when I weigh everything up, I'm not persuaded by Miss M's version of events that she knows nothing about the fraudulent payments. Having looked at all the evidence, I think there would've been good grounds to report the events here to the police to investigate, and that Nationwide was therefore justified in placing a CIFAS marker against Miss M's name. I also think it more likely than not that Miss M knew rather more about the account activity than she's told Nationwide or this service. So, I won't be asking Nationwide to remove the marker.

**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 Miss M to accept or reject my decision before 30 January 2024.

Sharon Kerrison  
**Ombudsman**