

The complaint

Mr W is unhappy that Nationwide Building Society registered a Cifas marker against his name. Cifas is the UK's fraud prevention agency. Mr W is also unhappy that Nationwide won't disclose certain information to him. He wants the marker removed.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In August 2023 Mr W, via a broker, applied for a mortgage with Nationwide. Mr W said that *'without my knowledge or consent'* his employer (Mr S) organised for a fraudulent bank statement to be produced by a third party who was able to *'amend documents'* and this was then submitted as part of the mortgage application.

Nationwide declined the application; and in November 2023 Mr W discovered that it had registered a Cifas marker (false application) against him in relation to the fraudulent bank statement. Mr W said his bank account was closed because of the Cifas marker, and he'd been unable to make another mortgage application.

In January 2024 Mr W complained to Nationwide. He explained how the situation had come about and wanted to know why the Cifas marker had been registered against him given he'd been the victim of a crime and shouldn't be penalised as a result. He wanted it removed. Nationwide said it had been unable to evidence Mr W's testimony of events; and maintained it had acted fairly in registering the Cifas marker against him.

Mr W remained dissatisfied and referred his complaint to the Financial Ombudsman. He said Nationwide was refusing to remove the Cifas marker, nor would it tell him why it had been registered given he'd explained he wasn't party to the fraudulent document.

One of our Investigators considered the information Nationwide had provided and didn't think it had acted unreasonably by applying the Cifas marker against Mr W. She asked Nationwide if she could share information with Mr W about the reason why the Cifas marker had been applied – but Nationwide didn't provide its consent. It said it had provided Mr W with all it could as part of a Data Subject Access Request (DSAR).

Mr W disagreed and so the matter has been passed to me to decide. He questioned how we could say Nationwide had treated him fairly without us knowing why the Cifas marker won't be removed. He provided us with information from Nationwide that he'd obtained through the DSAR in which there is reference to *'third party'* information. Mr W said it was unfair that he wasn't privy to that third party information to comment on. He said Nationwide had discriminated against him.

Mr W also provided us with evidence which he said showed he sent legitimate bank statements to Mr S who then *'doctored'* them without his authority before being submitted as part of the mortgage application. He said this showed he wasn't complicit in the fraud.

Mr W said the thought of having the Cifas marker against his name for the next six years was hugely distressing and he just wanted to understand why it won't be removed.

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 W has explained that the Cifas marker has impacted him greatly, particularly due to the closure of his bank account and being unable to get a mortgage. But while I know this won't be the outcome Mr W is hoping for, for largely the same reasons as our Investigator, I don't think Nationwide has unfairly applied the Cifas marker. I'll explain why.

The bar for recording a Cifas marker is a high one. If a business decides to file a marker it must have sufficient evidence and meet Cifas' standard of proof. To meet the standard of proof the business must have:

- reasonable grounds to believe that a fraud or financial crime has been committed or attempted; and
- clear, relevant and rigorous evidence such that the business could confidently report the conduct of the customer to the police. This should be more than just a suspicion or concern.

However, a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a Cifas marker, the business must carry out checks of sufficient depth, as well as give the customer the opportunity to explain the activity to understand their level of knowledge and intention.

As a lender, Nationwide is entitled to look into the circumstances of customers who wish to borrow money – as it did here. It was because of those checks that Nationwide decided to make an entry onto Cifas about Mr W.

As Mr W is aware from the information provided by Cifas, Nationwide couldn't verify his bank statement provided as part of the mortgage application. It isn't in dispute that the bank statement was falsified, and on that basis, I think Nationwide would've had reasonable grounds to believe a fraud or financial crime had been committed or attempted.

Mr W's testimony is essentially that he was unaware at the time the mortgage application was made that his bank statement had been manipulated in any way – saying this was done without his knowledge or consent by Mr S. He wants to know why, on that basis, Nationwide won't remove the Cifas marker.

A business doesn't have to give any reasons in relation to registering a Cifas marker, so Nationwide isn't obliged to expand on what it's already told Mr W. But to meet the standard of proof required to register a Cifas marker, Nationwide must carry out checks of sufficient depth and retain records of these checks - and this would include giving Mr W the opportunity to explain the activity that gave rise to the Cifas marker; to understand his level of knowledge and intention.

Based on the evidence I've seen; I'm satisfied Nationwide has fully considered all the information Mr W provided in support of his position. It also sought relevant information from a third party (which can't be disclosed to Mr W). Nationwide has also considered the bank

statements and information from HMRC which Mr W provided to us as part of our review of his case; and it's confirmed to us that this new information doesn't change its position.

Therefore, I think Nationwide has obtained clear, relevant and rigorous evidence to support its position, which as a member of the Cifas scheme; it had an obligation to report in these circumstances. And on considering that evidence myself, including that from the third party, I want to assure Mr W that I'm satisfied Nationwide had reasonable grounds to do so. As such, I think it acted fairly when it reported Mr W to Cifas.

Taking all this into account, I think Nationwide has taken reasonable steps to test Mr W's testimony and to fully understand his level of knowledge and intent regarding the falsified bank statement. And so, I don't believe Nationwide's decision not to remove the Cifas marker was unreasonable; nor does Nationwide have to provide Mr W with any further explanation. Because of this I won't be asking Nationwide to take any action.

If Mr W has further information to support his position – then he should forward that to Nationwide for its consideration. Nationwide has told us Mr W is yet to provide his bank statements for the period 1 April to 16 May 2023.

Mr W says he feels Nationwide has discriminated against him given the problems he's experienced. I appreciate he feels that way, but I don't think Nationwide has treated him unfairly. I hope it helps Mr W to know that someone impartial and independent has looked into his concerns.

Finally, in relation to Mr W's DSAR, he's unhappy Nationwide has said that the data it holds is restricted, which it's unable to disclose. It's not our role to fine or punish a business for deciding not to disclose certain information when considering a DSAR. If Mr W is unhappy with what Nationwide has said, he is free to take this up with the Information Commissioner's Office.

Overall and having considered everything, I'm satisfied that Nationwide acted fairly in applying the Cifas marker against Mr W.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision **before 6 June 2024**.

Anna Jackson
Ombudsman