

The complaint

Mr O complains that National Westminster Bank Plc ('NatWest') registered a Cifas marker against him without due cause.

What happened

The details of this complaint are well-known to both parties, so I will not go into every detail of what happened here. But in summary, in July 2019 a payment of approximately £4,400 was paid into Mr O's NatWest account. The funds were almost all withdrawn or transferred to third party accounts through online banking. The sending bank later confirmed the funds were fraudulent funds, and so NatWest took the decision to close Mr O's account and referred Mr O to Cifas who registered a fraud prevention marker against him. In support of this decision they said in summary, that:

- Mr O had not reported his card lost or stolen, but £200 of the fraudulent funds were withdrawn using his card and PIN; and
- The transfers out of the account of £1,200, £1,300 and £1,500 were sent from his online banking, but Mr O said he did not give anyone else his online banking login details.

Mr O said that he had nothing to do with the transfer in, or removal of, the fraudulent funds. In summary, he explained that he had:

- moved to the United Kingdom as he was an international student here completing post-graduate studies;
- moved in with some people he met through a friend shortly after completing his course;
- been living with them for a few months or so when one of his housemates asked a favour of him. He told Mr O that he was having problems with his banking facilities and that he needed help accessing some money;
- regrettably agreed to help him, giving him his NatWest card and PIN as he didn't use this account much;
- not provided him with any other details such as his online banking login credentials, nor had he told him that he could access his online banking facilities;
- shared a small house with this man, so he said it was likely that the man would have been able to see him enter his phone passcode and get into his phone which contained his banking details including his online banking login details;
- not authorised the payments which left his account, so thinks the man must have gone into his room and completed the transactions using the information on Mr O's phone;
- returned to his home country in order to apply for a new visa to complete his doctorate, and the marker was placed whilst he was out of the country;
- applied to upgrade his main current account held with another bank when he returned to the country. He said his bank then told him they were closing his account.

- then discovered that NatWest had registered the Cifas marker against him, so he complained to them in January 2023;
- learned many lessons from what happened, and even completed an anti-money laundering course since this occurred.

NatWest reviewed Mr O's complaint and did not agree they had done anything wrong. They said they closed Mr O's account in line with the terms and conditions of said account, and the Cifas marker had been correctly loaded.

Mr O remained dissatisfied, so he complained to our service. One of our investigators looked into what had happened and didn't recommend that Mr O's complaint be upheld. In summary, they thought that NatWest had sufficient evidence to refer Mr O to Cifas. Mr O was not happy with our investigator's opinion. In summary, he said:

- he had been careless in handing over his card and PIN, but he genuinely did not know it was going to be used for fraudulent purposes;
- his NatWest account was not his main account and so used infrequently. The scammer did not wait for a long time between obtaining the card and PIN and utilizing Mr O's account – they used it quickly. It is just that Mr O had not used the account for some months;
- due to the passage of time he does not have evidence to show that there were no locks on the doors in his shared home, or that someone would be able to get into his phone; and
- the investigator was hypothesizing too much without giving him the benefit of the doubt.

As no agreement could be reached, the case has been passed 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.

Having done so, I have reached the same conclusion as our investigator and for broadly the same reasons. I'll explain why.

The type of Cifas marker that NatWest applied here is for 'misuse of facility' – relating to Mr O's NatWest account being used to receive and move on fraudulent funds. In order to file this marker, NatWest are not required to prove beyond reasonable doubt that Mr O is guilty of a fraud or financial crime, but instead they must show that there are grounds for more than mere suspicion or concern that such an offence took place. Cifas guidance said:

- *“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.”*

So, the relevant findings for me to make are whether I believe there is sufficient evidence to conclude that on balance the money sent to Mr O constituted fraudulent funds, and that he was deliberately dishonest in relation to receiving and moving these funds such that NatWest fairly and reasonably escalated their concerns to Cifas.

NatWest have shown evidence that the funds were reported as fraudulent funds. And Mr O has not suggested that he had any legitimate claim to these funds, nor evidence that his housemate did. So, on balance, I am satisfied that fraudulent funds did come into Mr O's account. Mr O denies any knowledge of this, but he does not refute that this happened.

So what is left for me to decide is whether on balance I think that it is most likely that Mr O was deliberately dishonest in his actions regarding these funds. Which in this case means determining whether I think it was most likely that he was an unwitting money mule, who was simply trying to help his housemate out and was totally unaware of what happened on his account at the time, or whether he was aware to some extent that the funds going into and out of his account were or might be fraudulent. And I think it is most likely he was involved in the fraud in some way. I say this because:

- Mr O said that his housemate told him he was having trouble accessing his funds, and so he lent him his card and PIN. I am unclear how this would have helped him access his funds – certainly if he had access to his online banking it seems strange that he could not have simply sent Mr O the funds and asked Mr O to withdraw them for him. Whilst Mr O lived with this man, it does not sound like they had actually known each other for a long time, and so this does seem unduly trusting to have done this and not asked any follow up questions. I am not saying this could not have happened – but I can see why NatWest might have been concerned about this version of events.
- NatWest's technical evidence shows that Mr O's mobile phone was used to login to his online banking in order to make the transactions – no other devices were added at the time of the fraudulent transactions in order to make the transfers out of the account. Whilst I accept that Mr O's housemate could have withdrawn funds if Mr O gave him his card and PIN, it seems far less plausible that his housemate could have observed Mr O entering his phone passcode, sneaked into his room, taken his phone, discovered where he kept his banking details stored, used them to login to his online banking, set up new payees and sent three large payments out, all without Mr O noticing this had happened. I think there would be a large risk that Mr O would have seen his housemate doing at least some part of the process and questioned it. This could have meant that the housemate risked losing access to the funds. This seems an unnecessary risk to take, and on balance it seems far more likely that Mr O was aware of what was going on.
- I also say this because Mr O has provided a screenshot of his banking details in his notes in which the date stamp reads September 2019, so I cannot be sure that these details were even on his phone at the time of the fraudulent transactions, let alone that Mr O's housemate could have seen them and utilized them.
- Mr O has not reported noticing losing his phone when any of this was happening, or noticing that his housemate had his phone, and so it seems most likely that he retained access to his online banking after these transactions took place. It seems strange that after lending his banking facilities to someone he had known a few months, he did not check his online banking again himself. Had he done so, he would have seen that someone had sent payments from his account which would, one assumes, caused confusion and concern and led him to contact NatWest. He did not do this.
- Mr O says he did not benefit from these transactions, but given that £200 was withdrawn in cash, I cannot say for certain that he didn't.

When considering all of this, I don't think that Mr O's version of events are most likely what happened here. I think there is enough here to say that it was fair for NatWest to conclude that it is more likely than not that Mr O was complicit in the receiving of fraudulent funds and sending them on. And whilst I appreciate Mr O's representative has talked about the criminal law and sentencing guidelines, it is worth noting the nature of this service. We are an informal service, and our remit is to look at whether NatWest acted fairly and reasonably in this case. I have not seen anything to say that they did not.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 August 2023.

Katherine Jones
Ombudsman