

The complaint

I, a limited company, has complained National Westminster Bank plc lodged a fraud-related marker on the industry fraud database, CIFAS, as well as closing their account.

What happened

Mr I has been the sole director of I since September 2022 and represents them in this complaint. For ease I shall generally refer to both throughout my decision.

Mr I contacted NatWest to open a further business account which would allow I to receive funds from one of their clients (who I'll call Mr K) and make payments on their behalf. In November 2022 there were two large payments into this account on 10 and 28 November of £1.4 million and £177,904.31. After the payment of 10 November was received, Mr I transferred £1,400,080 to I's other NatWest account in 16 separate payments. Until 11 November, when these transfers started, there was only a balance of £8.06 in I's account. Practically all £1.4 million was disbursed through the payment of invoices over the next fortnight.

Mr I was told by NatWest that they were closing I's account. They also lodged fraud-related markers on I's and Mr I's records with CIFAS.

Shortly afterwards Mr I found other accounts were also being closed. He has found it difficult to operate I's business since, having had to lay off staff. The situation has been exacerbated by Mr I's poor health which has made it difficult for him to manage his complaint.

Mr I complained to NatWest and asked them to remove the markers. NatWest didn't feel they'd done anything wrong and refused to remove them.

Mr I brought I's complaint to the ombudsman service.

Our investigator reviewed the evidence and wouldn't ask NatWest to remove the marker. She noted the evidence Mr I brought in support of I's complaint – including invoices, correspondence with Mr K, completed anti-money laundering checks. However she was also able to see the £1.57 million received into I's account were funds reported stolen. She told Mr I she wouldn't be asking NatWest to do anything further.

Mr I disagreed with this outcome. He's asked an ombudsman to consider I's complaint.

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've reached the same outcome as our investigator. I'll explain why.

It is clear what the requirements are prior to lodging a marker. Specifically:

“There must be reasonable grounds to believe that an identified fraud or financial crime has

been committed or attempted.

The evidence must be clear, relevant and rigorous.”

So NatWest must be able to provide clear evidence that an identified fraud was being committed and Mr I was involved.

I've seen the evidence provided by NatWest. This confirms they received notification from other banks that funds paid into I's NatWest account were the proceeds of fraud. I am satisfied a financial crime – of a significantly large size – was committed.

Mr I has told us he was providing accountancy and tax services to Mr K. I've seen the contract relating to this service. Mr K was also providing I with additional clients. Mr I was hopeful this would provide a boost to I's services and profile enabling them to grow and take out premises to reflect their business status.

I've also seen invoices that Mr K supposedly provided to I as requiring payment using the incoming funds in November 2022. Mr I has been insistent that he has acted completely above board and carried out all the checks he needed to ensure he was complying with his regulatory requirements.

Unfortunately I am not convinced. His relationship, contracts and emails with Mr K don't represent what I'd expect to see if this was a bona fide business. For example I don't think it's sufficient just to ask Mr K to confirm the money isn't the proceeds of crime. I'd have expected Mr I, a qualified accountant, to carry out detailed checks about where the £1.4 million came from particularly as Mr K seemed to imply this was family funds to pay business invoices.

I'm also not convinced by the invoices. These are all for high-value amounts but provide little detail and look as if they were all completed on the same laptop with small changes of font. It's also the case that the money was spent urgently and there's nothing within the invoices providing required payment dates which I'd expect to see. The invoices also seem light on any tax, VAT details or limited company status for any of the recipients. So I don't believe Mr I did carry out due diligence and I suspect this was because I was providing services to Mr K and receiving payment – from fraudulent funds.

It's clear that Mr I did have his own doubts later and raised concerns. But the evidence suggests he wasn't anxious to push Mr K. I suspect this was as he realised NatWest believed the funds were fraudulent and he knew he would come under suspicion.

I have to say I'm surprised at how slow NatWest was to intervene based on the level of funds being used. They say now that I's behaviour resembled those of someone involved in fraud but they still allowed 18 payments to be made using £1.4 million despite I's account history not resembling this level of use at all.

I appreciate what Mr I has told us about the impact of what has happened on his work life and his mental health. I'm also very aware that his young son has a disability.

However the requirements around banks lodging markers at CIFAS include there being sufficient evidence that the customer was aware and involved in what was going on. In this case I think this exists here from reviewing payments into I's NatWest accounts.

On this basis I don't believe it would be fair and reasonable to ask NatWest to remove the CIFAS markers.

My final decision

For the reasons given, my final decision is not to uphold I's complaint against National Westminster Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask I to accept or reject my decision before 19 June 2024.

Sandra Quinn
Ombudsman