

## **The complaint**

Miss D complains that National Westminster Bank Plc are holding her liable for disputed transactions she didn't make. And they've loaded a national fraud marker against her name.

## **What happened**

On the 12 August 2019 an overdraft of £2,750 was applied for on Miss D's account. Then on the 14 August 2019 Miss D received two payments into her account totalling £4,000. A loan application was also made using Miss D details, but this wasn't successful. Later the same day £4,000 was transferred out to two new payees via online banking.

On the 15 August 2019 NatWest were advised by the sending bank that Miss D had received fraudulent funds, totalling £4,000, on the 14 August 2019. And they decided to load a Cifas marker for Misuse of Facility against Miss D and close her account.

On the 16 August 2019 Miss D visited her local branch to explain she was having difficulties accessing her online banking and she'd lost her debit card. Miss D explained that she wasn't aware that the funds were deposited into her account or any of the account activity from the 12 August 2019. In total Miss D disputed almost £7,500 in fraudulent transactions. And she hadn't seen her debit card for a week prior to the fraudulent transactions.

Miss D complained to NatWest about the disputed transactions and the poor service she'd received. But the bank didn't uphold her complaint. In summary they thought Miss D had most likely authorised the disputed transactions and they'd acted fairly.

Miss D wasn't happy with NatWest's response so complained to our service.

One of our investigators looked into Miss D's complaint, but they didn't uphold it. In summary they thought Miss D most likely authorised the disputed transactions because:

- A fraudster needed access to a significant amount of Miss D's security and personal details to carry out the fraud.
- There's no explanation for how a fraudster obtained these details.

Miss D didn't accept our investigator's opinion. And in summary said:

- She's been a victim of fraud.
- She doesn't know how the fraudsters got hold of her online banking details.
- She informed NatWest as soon as she realised her card was missing.

Miss D didn't accept our investigator's opinion, so it's been referred to me for a decision.

## **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, my review of the evidence has led me to the same overall conclusions as the investigator previously set out and for much the same reasons.

I've firstly considered the disputed transactions. Generally, NatWest can hold Miss D liable for the disputed transactions if the evidence suggests that it's more likely than not she made or authorised them herself.

I'm satisfied from the bank's technical evidence that Miss D's online banking details were used to make the disputed transactions. But the regulations relevant to this case say that is not, on its own, enough to enable NatWest to hold her liable. So I also need to think about whether the evidence suggests that it's more likely than not that Miss D consented to the transactions being made.

From what I've seen, I don't think it's unreasonable for NatWest to conclude that Miss D authorised the transactions. This is because:

- To carry out the online banking transactions a fraudster would need access to Miss D's card, PIN, card reader, mobile banking passcode and online banking details. Miss D's explained that she's not recorded any of her online or mobile banking details – therefore it's difficult to understand how a fraudster could have successfully obtained these without her knowledge.
- Most of the disputed transactions were sent to new payees. To create a new payee via online banking a fraudster would need access to Miss D's online banking details plus her card, PIN and card reader. On reporting the disputed transactions to NatWest Miss D explained she lost her card and last used it on the 6 August 2019. I find it strange that Miss D didn't notice her card missing sooner, based on the regularity of her use up to the 6 August 2019.
- On the 9 August 2019 a 'get cash' transaction was carried out from Miss D's account. Miss D says that she didn't carry out the transaction – however on contacting NatWest and our service she didn't initially query it, only after the transaction was mentioned in our investigator's view – I find this surprising. 'Get cash' transactions require a fraudster to have access to a customer's mobile banking for a code to be generated, and it's option for customers to use when they don't have their debit card. To carry out all of the transactions a fraudster would have needed access to Miss D's online banking for *at least* 5 days between the 9 and 14 August 2019. I think it's more likely Miss D was aware she didn't have access to her card at this point – and therefore carried out the get cash service. And I do question why at this point she didn't let NatWest know about her missing card.
- Miss D's explained that her PIN was recorded on her mobile phone – however I've not seen a plausible explanation for how a fraudster obtained her PIN via this means.

Taking everything into account, I find, on balance, that Miss D authorised the disputed transactions. It follows that NatWest is entitled to hold him liable for them.

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*Cifas marker*

The marker that NatWest have filed with Cifas is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Miss D 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 NatWest must first be able to show that fraudulent funds have entered Miss D'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. This can include allowing someone else to use their account in order to receive an illegitimate payment. But 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 bank must carry out checks of sufficient depth and retain records of these checks.

I've considered the requirements to register a Cifas marker – and I'm satisfied that NatWest have met the required standard. I say this because I've seen evidence that Miss D's account received £4,000 of fraudulent funds on the 14 August 2019 – and for the reasons I've outlined above I'm satisfied that Miss D most likely authorised transferring out these funds to new payees on the same day. For this reason I'm satisfied that Miss D was most likely *deliberately complicit* when receiving the funds. And I think NatWest have met the standard of proof to register a Cifas marker. Therefore I won't be asking them to take any further action here.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 19 March 2021.

Jeff Burch  
**Ombudsman**