

The complaint

Mrs D complains that National Westminster Bank Plc unfairly recorded a marker at CIFAS, the national fraud database, after it closed her account.

What happened

Mrs D paid in a cheque for £5,000 to her account. It was returned as being a fraudulent or counterfeit cheque. NatWest restricted Mrs D's account and told her it was going to be closed. She complained and it issued a final response on 13 November 2019 saying that it hadn't made a mistake.

Mrs D later found that it had also registered a CIFAS marker. On 5 August 2020 NatWest issued a response to her complaint about this and said that the CIFAS entry would be removed. Mrs D says that this had affected her ability to open a savings account and re-mortgage her buy to let properties. She incurred legal and other costs.

Our investigator recommended that the complaint be upheld and Mrs D paid £500 for the distress and inconvenience caused. He said that Mrs D hadn't evidenced that she had a consequential loss due to the marker and so he couldn't consider these elements individually. He said that this service provides free informal dispute resolution and so it wouldn't have been necessary for Mrs D to incur the legal costs to bring a complaint to us.

NatWest said to our investigator that it didn't agree to the compensation.

Mrs D didn't agree and said that she would provide evidence that two mortgage applications had been declined. Her ISA had been closed and there was no adverse information on her credit file. The nature of her work meant that the marker could have had an impact on her business and that's why she needed to take legal advice. She had missed out on financial products and her livelihood had been affected. NatWest didn't make any enquiry with her.

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.

I need to consider whether the report to CIFAS was made fairly. On this point, NatWest needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

Mrs D said she received a cheque from a relative at a family funeral. She says she had no idea that there was a problem with the cheque. She has since shown that the money was sent to a different account a few days later by faster payment. And the person giving her the cheque has made a statement saying it was a genuine one. I appreciate that NatWest says it received a report from the payer's bank saying the cheque wasn't genuine. But NatWest made no enquiries with Mrs D to establish that she had been a witting recipient of a

counterfeit cheque and that she was attempting fraud. While she knew and complained about her account being closed she didn't know that the CIFAS marker had been added.

NatWest says that it applied the CIFAS marker because Mrs D received fraudulent funds into her account. So, I've looked at whether NatWest was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that NatWest needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mrs D's account of events and the evidence NatWest has provided, I'm not satisfied that NatWest had sufficient evidence for the CIFAS marker to be recorded in the first place.

I make clear that Mrs D's main complaint now is about the CIFAS marker. She didn't refer the complaint about her account being closed at the time of the first final response and within the six months she had to do so after that.

was there a financial loss?

Mrs D has provided more information about what she says was a financial loss as a result of the CIFAS marker. She said she applied for an ISA in March 2020 and deposited £10,000. She has shown that the application was declined, and the money returned. In the letter about this the financial business involved refers to it having checked information at credit reference agencies and CIFAS. Mrs D says she has a very good credit score and I think she was reasonably aware at this time that there was some issue with information held about her. In an email about the account closure to a third party she's provided she stated "*I have therefore paid the money into a different savings account. Will try and open another ISA maybe...*". Mrs D has claimed £200 loss of interest, but she hasn't provided her workings for that or said how that compares to what she could have earned elsewhere. She says in her complaint form that even when the CIFAS marker is removed she can't apply for products for 18 months. I don't accept that as the position here.

Mrs D says she applied for two mortgage products in June 2020. She claims compensation for two broker fees at £495 and other costs making a total of £1,022. She hasn't detailed those other costs which I understand to be higher interest paid. She hasn't provided the copies of the decline letters she said she would. I note from a mortgage illustration dated 18 August 2020 after the final response from NatWest that there would have been product fees for the new mortgage. I haven't seen any calculations to show that taking these fees into account the new mortgage products would save Mrs D money. I also don't think that there was any guarantee she would have otherwise had these mortgages granted and note that the broker fees she refers to are described as non-refundable. I consider Mrs D has had sufficient time to evidence any loss and, as I said above, in March 2020 when her application for a savings account was refused she had reason to think that there was an issue.

Mrs D has made reference to the impact on her business. I note from a bank statement she provided that this is a separate legal entity and so I'm not able to take that into account. And there is nothing to substantiate this impact in any event.

I do though note the reference Mrs D has made to not receiving the remaining funds in her current account of over £1,400 for a year. I asked our investigator to clarify this with NatWest and it stated that the funds were returned on 9 September 2020. I see no basis for it to think these funds weren't genuinely hers and to deprive her of them. I asked our investigator to tell it that I will be requiring it to pay simple interest of eight percent per annum on the other

funds in the account from the date the cheque was returned on 18 October 2019 as part of my award.

Mrs D's costs

Mrs D has submitted an invoice for third party legal costs of £3,000 and for her own time of £3,300 (calculated at £275 per hour). She has made reference to other costs of statements and postage but not provided evidence of these.

We rarely think it necessary for professional costs to be incurred to bring a complaint to this service. As our investigator has said we provide informal dispute resolution as an alternative to the courts. We also don't normally think it reasonable to pay for time spent and if we were to would only consider this at modest and not professional rates. I don't think it fair or reasonable that NatWest be required to cover any of these costs

Putting things right

I don't doubt Mrs D's distress at finding out about the CIFAS marker especially given her profession and the inconvenience this has caused to her. I find that the compensation of £500 recommended addresses this and reflects the impact for her. And as I set out above I will be additionally compensating her for the delay in receiving her money back.

I appreciate that the amount I am awarding will remain disappointing to her. If she doesn't accept my decision she remains free to pursue this in court subject to any relevant time limits.

My final decision

My decision is that I uphold this complaint in part, and I require National Westminster Bank Plc to

- 1) Pay Mrs D £500
- 2) Pay Mrs D eight per cent simple interest on her credit account balance from 18 October 2019 to the date the funds were returned to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 26 July 2021.

Michael Crewe
Ombudsman