

## The complaint

Mr K has complained that National Westminster Bank Plc (NatWest) are holding him liable for an overdraft debt which he says was taken out fraudulently in his name.

## What happened

Both sides are most familiar with the case, so I'll summarise what happened in brief.

In late 2016, a NatWest current account was opened in branch in Mr K's name, using his passport and proof of address. The overdraft was maxed out and the account defaulted.

Mr K disputed the debt in 2017 and 2018. He raised this again in 2023, and NatWest issued their final response. NatWest held Mr K liable for the overdraft on the basis that it was taken out using his passport and he'd had some fraud markers registered against him.

Mr K came to our service. He explained that his passport and proof of address documents were stolen by a friend who'd been staying with him. The friend looked similar enough to him that they could impersonate him in branch. They'd opened other accounts in his name, and he showed that other businesses had accepted this was a case of ID theft. He noticed things were wrong when a family member overheard his friend refer to themselves as Mr K on the phone. When Mr K checked his friend's belongings, he found his passport. The friend left and cut contact, and Mr K reported them to the police.

Our investigator looked into things independently and didn't uphold the complaint. Mr K asked for an ombudsman to look at things afresh, so the complaint's been passed to me to decide.

I sent Mr K and NatWest a provisional decision on 8 August 2023, to explain why I thought the complaint should be mostly upheld. In that decision, I said:

*First, I understand NatWest thought that Mr K complained too late, which would mean that the complaint was outside of our jurisdiction. However, I can see from Mr K and NatWest's correspondence that this matter was raised in 2017, and Mr K's notes evidence that he expressed his dissatisfaction at the time. NatWest's own records show that an ID theft case was raised in 2018. I think it's most likely that Mr K did complain within the 6 years he needed to. I can also see that he referred the matter to us within 6 months of NatWest's final response. So I find that this complaint was brought in time.*

*I need to consider whether NatWest are entitled to hold Mr K liable for this overdraft. Broadly speaking, the onus is on NatWest to show that they are.*

*This case is finely balanced. On the one hand, I understand why NatWest – and our own investigator – found that Mr K should be liable for the debt. It was taken out in branch using Mr K's passport, by someone who the branch staff confirmed looked like Mr K's passport photo. And NatWest spoke to another bank who also had a current account opened in Mr K's name at the time, who said that they didn't have any ID theft concerns and that Mr K used to have some fraud markers registered against him – though those are not showing, possibly due to the time that's passed.*

*On the other hand, I have substantial concerns that this current account application was not genuine. For example:*

- The phone number provided is not Mr K's, and public records show that it is actually the number for the friend who Mr K accused.*
- The email address provided is not one Mr K used in any of his historic correspondence and does not appear to be his.*
- There is a clear and plausible point of compromise for Mr K's documents and personal details.*
- While signatures can and do vary, the signature on the application bears little resemblance to genuine examples of Mr K's signature and appears to be false.*
- The handwriting on the NatWest application is very similar to the handwriting on the friend's public documents.*
- While one business did not have ID theft concerns, Mr K has shown that other businesses involved accepted that he'd been the victim of ID theft, and some even registered that he was a victim of impersonation on the national fraud database.*
- The way the account was used is consistent with what I'd expect if it was opened fraudulently using ID theft.*
- Mr K has been consistent in his testimony and reported the matter to the police.*
- While I accept that NatWest were told Mr K had fraud markers against him, this was the recollection of a staff member from another bank. I've not been given anything to substantiate that these markers existed or why they were added; they were a type of marker that is normally for a different matter than the matter being decided in this case; and I can see that in fact some of the businesses involved actually registered markers confirming that Mr K was a victim of fraud rather than a perpetrator – so I can't rule out that there was some sort of mix up or miscommunication there.*

*So while I don't think NatWest acted unreasonably in holding Mr K liable for the debt, taking into account everything that's been said and provided so far I don't think they have the balance of evidence needed to continue holding him liable. I'm not satisfied that Mr K opened this account, and it looks likely that it was opened by someone else. It follows that I currently think NatWest should no longer pursue Mr K for this debt.*

*Mr K asked for compensation, and I've thought carefully about this too. But I'd normally only award compensation if I found that the business had got things substantially wrong. Here, I've found that NatWest had good grounds to open this account and to hold Mr K liable for it, even if I ended up disagreeing with them overall. Indeed, I'm very much conscious that it's possible Mr K did take out this account or work together with his friend. Further, it's the fraudster who was primarily responsible for the fraud and for the distress Mr K suffered here, rather than NatWest – who were also victim to the fraud and also lost out. And while the case has taken a long time to come to us, that's mainly because Mr K chose not to bring it to us until 2023. I do also acknowledge that NatWest had a 1-letter typo in one of their letters, but I don't find that to be of any real significance. And it's worth bearing in mind that we're here to resolve complaints informally, not to issue fines or punish businesses.*

*So while I do understand Mr K's position, I do not intend to award compensation here. I think the best thing is for NatWest to now disassociate him from this account.*

I said I'd consider anything else anyone wanted to give me. Both sides replied, and I'll talk about what they said below.

### **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.

NatWest reiterated why they'd previously raised jurisdiction issues – because of all the time that's passed. It's not clear whether they still object to us considering the case, or whether they were just giving more context to their prior position. So just to be on the safe side, I'll reiterate that I've found this complaint to be in our jurisdiction as the evidence suggests that Mr K expressed his dissatisfaction by 2018, and that he brought the matter to us within 6 months of NatWest's final response.

Mr K felt that NatWest must not have investigated things, since if I found the loan to most likely be fraudulent then he felt they should have too. He felt NatWest didn't have reasonable grounds to believe the account was his. However, I can see that NatWest did investigate. And as I explained in my provisional decision, I can see why NatWest – and our own investigator – thought Mr K was liable for the account. It was taken out in person using Mr K's genuine passport and proof of address, by someone who the branch staff confirmed matched his passport photo. The other bank NatWest spoke to also thought Mr K had applied for their account, and they also warned NatWest that Mr K had committed fraud elsewhere. I also have not ruled out the possibility that Mr K really did take out this account, such as by working with his friend. I still find that NatWest had reasonable grounds to believe this was Mr K's debt – even if I have ended up disagreeing with them on balance.

Mr K argued that he was too successful to have a reason to commit fraud. But while I can understand his argument, successful people can and do commit fraud, so I don't find this argument compelling. Mr K also asked me to consider character references. But this decision is not a judgement of Mr K's – or anyone else's – character. I am impartial and don't make my conclusions based on personal interpretations of people's character. I am also unsure what difference it would make for me to consider Mr K's character references when I've already agreed with him that the account probably wasn't his.

Mr K said NatWest passed him around and wouldn't deal with him. This isn't reflected in the records which either side have provided, though I accept records may be limited due to the time that's passed. But I've not found that NatWest ignored Mr K. As far as I can see, things took as long as they did primarily because Mr K didn't pursue the matter further until 2023.

Similarly, Mr K said this had affected him for years, he'd been denied a particular credit facility in 2022, and we were letting NatWest get away with things. But as I set out before, the delay seems to have mostly been down to Mr K, we're not the regulator and are not here to fine or punish businesses, the fraudster is the party mainly responsible for the fraud being committed, and I find that NatWest had reasonable grounds to think this might have been Mr K's account. So while I do understand where Mr K is coming from, and while I understand this may come as a disappointment to him, I do not think it would be fair to award further compensation in this case.

Lastly, NatWest have explained that the account involved is closed, it is no longer linked to Mr K, they're not pursuing Mr K for it, and it should no longer be reporting on his credit file as it's been over six years since the default. So hopefully that will give Mr K some reassurance that he will no longer have to deal with this account.

### **Putting things right**

I direct National Westminster Bank Plc to:

- Take this account out of Mr K's name and disassociate him from it, if it has not done so already;
- Make sure that Mr K is no longer pursued for this account; and-
- Remove any record of this account from Mr K's credit file, if any remains.

### **My final decision**

For the reasons I explained, I direct National Westminster Bank Plc to put things right in the way I set out above. I don't make any further award.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 14 September 2023.

Adam Charles  
**Ombudsman**