

The complaint

Mr D has complained that National Westminster Bank Plc (“NatWest”) acted inappropriately when it increased his overdraft limit twice in 2017. He also believes the bank failed to spot the unusual activity on his account or the fact that he was struggling with a compulsive gambling addiction.

Mr D is joined in his complaint by an interested third party I’ll refer to as ‘O’. For the sake of clarity when I refer to Mr D I also mean O.

Background

Mr D has explained that he suffers from a compulsive gambling problem. This ultimately resulted in Mr D embezzling over £830,000 from his ex-employer in order to fund his addiction. During the time Mr D was syphoning funds into his account NatWest approved two overdraft limit increases, which Mr D says led to further detriment. He has questioned how he was able to transfer such high volumes of cash into his account without any questions from NatWest and why it would approve overdraft limit increases when the gambling activity on the account was as high as it was.

NatWest has said that it did question some of the transfers that came into Mr D’s account during that time but that it was given reassurances from the sending bank that the funds were legitimate and so took no further action. In regard to the overdraft limit increases it says it ran all the necessary checks at the time to ensure the credit was both affordable and sustainable and having done so it was satisfied Mr D could afford the lending. Therefore, it didn’t think it had done anything wrong and didn’t uphold the complaint.

Unhappy with NatWest’s response Mr D brought his complaint to our service. One of our investigator’s looked into it already. She found that given the issue around the cash transfers and embezzlement had been discussed at length by the courts and was the subject of Proceed of Crimes Act (‘POCA’) considerations, it wasn’t appropriate for her to discuss them further.

She did think that NatWest was wrong to provide the credit limit increases in April and May 2017 as she felt that there was sufficient evidence at the time to show Mr D’s finances were becoming increasingly unmanageable and that he would struggle to maintain the facility on the account. So, she upheld that part of his complaint and asked NatWest to refund any interest or charges added to the account after the limit was increased beyond £2,000 in April 2024.

NatWest accepted the investigator’s findings, but Mr D didn’t. In response he said that he still didn’t accept that NatWest had acted appropriately when he started to transfer large amounts of money from his employers account into his own. He repeated that if NatWest had queried these transfers sooner, as he believes it ought to, it would have stopped him from embezzling as much money as he did and thus prevented him from harming both himself and his former employer.

As Mr D didn’t accept the investigator’s findings his complaint has been passed to me for

consideration.

My findings

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 agree with the findings of our investigator. I know this will upset Mr D so I've set out my reasoning below. There are two main aspects to Mr D's complaint and so I will address them separately.

Did NatWest do enough when the activity on Mr D's account changed substantially?

While the criminal activity that was linked to Mr D's account did eventually result in a court case I think I can comment on Mr D's allegation that NatWest effectively facilitated his ability to steal from his employer by not reviewing his account activity closely enough. I say this because to my knowledge this argument wasn't considered by the court previously.

Mr D has queried how, when his account had previously been consistently overdrawn and he'd struggled to make loan repayments on a loan he held with NatWest, the bank didn't notice when he suddenly started to deposit thousands of pounds a day into his account. He also wonders how there was no contact with the bank when the same deposits were then almost immediately spent on gambling websites.

I've reviewed Mr D's account statements to understand what was happening between March 2017 and December 2019 when he started to misappropriate funds from his employer. Prior to that starting Mr D's account appears to have been consistently overdrawn with indicators that his finances were starting to spiral out of control. I can see in September 2016 Mr D missed a scheduled loan repayment on a NatWest loan he had and spoke to someone at the bank about his problems. During that call he was also sign posted to Gamble Aware so it would appear Mr D disclosed his problem with compulsive spending during the call as well.

So, I do think there was a history of an account showing signs of distress and a consumer with financial vulnerabilities linked to it before Mr D started to transfer stolen funds into the account.

Looking at the transfers themselves I can see that the amounts were irregular and relatively small to start. Mr D has explained he was writing false invoices for the company which would explain the amounts that were being lodged. It does appear that very quickly Mr D started to send over daily deposits, often for amounts under £5,000 but on occasions he would make multiple deposits a day, meaning Mr D's account could be credited with tens of thousands of pounds in a single day and then those funds would quickly be used to gamble.

By mid-2018 Mr D was regularly depositing and spending between £25,000-£40,000 a day on his account. All without any questions or interjections from NatWest.

However, NatWest has said that it did query some of the transactions coming into Mr D's account at the time, just not with Mr D. Rather it contacted the bank the deposits were being sent from to confirm there were no concerns on that side regarding the origins of the funds. And having done that it received confirmation that the transfers were fully authorised and that the sending account was linked to Mr D already, insofar as it appeared to be his employer. So, it didn't question the deposits any further as they were coming from a legitimate source.

NatWest has said that it assumed the deposits were wages being paid to Mr D. I'm not

convinced by this argument as it seems unlikely Mr D's income, which had previously been declared as approximately £21,000 a year. So, it doesn't seem logical that the bank would assume these deposits were linked to his income as they far exceeded that amount.

That said, NatWest did respond to the changed activity on the account and did query it with the sending bank. Because of the nature of Mr D's crime, it wasn't immediately apparent what was going on. The funds were coming from a legitimate source and the transfers were all fully authorised. So, while I can understand why Mr D believes the bank should have contacted him and questioned where the money was coming from, I think it had already asked those questions to a reasonable third party and received a response from it. So, I don't think it was wrong not to ask Mr D the same question. And I'm not convinced that the bank could have prevented Mr D from committing the crimes he did during that time, especially when there was nothing to indicate criminal activity was happening, as Mr D's employer was unaware at that time that the funds had been paid out dishonestly.

Mr D has asked that NatWest repay some of the funds he embezzled to his previous employer. However, if his employer thinks it is owed compensation from NatWest that would be something it would need to pursue itself. And I don't think NatWest needs to pay Mr D any compensation in regard to the funds he stole during this time. I do agree that the activity on his account changed exponentially during this period, but I think NatWest queried this appropriately and I'm not convinced that if it had asked Mr D directly what was happening it would have resulted in him changing his behaviour. So, I don't think it's fair to hold NatWest liable for any of Mr D's crimes or ask it to pay compensation for them.

Did NatWest act irresponsibly when it increased Mr D's overdraft limit in April 2017 and May 2017?

Our investigator found that it was irresponsible for NatWest to increase Mr D's overdraft limit in April and May 2017, and I agree with her findings on that matter and so do uphold this part of Mr D's complaint.

NatWest has said that at the time Mr D applied for the limit increase in April it ran thorough affordability checks and was satisfied that the increases were affordable.

Looking at Mr D's account history at the time I can see that in September 2016 he missed a monthly payment on a personal loan he had with NatWest and spoke to one of their advisors. He was also signed posted to Gamble Aware during that call.

In addition to the above looking at the account statements themselves I can see that Mr D's account was consistently overdrawn from October 2016, just after the above call, until January 2017 a few weeks before he applied for the limit increase. And it appears that throughout January and February 2017 Mr D was also regularly relying on high-cost credit loans which are seen credited to his account only to then be swallowed by the overdraft or used to gamble. And at the start of March 2017 Mr D actually requested that his limit be reduced to £2,000.

All of which means I think the activity on Mr D's account, along with recent disclosures about his existing financial difficulties and gambling related harm, meant that NatWest should have done more detailed checks before approving the limit increase in April 2017. And if it had it would have realised Mr D wasn't running his account well, was already overly reliant on credit and was showing signs of having an extreme compulsive spending problem. So, I don't think it would have approved the limit increase. And so, it also follows that I don't think NatWest should have then further increased Mr D's limit from £5,000 to £7,000 in May 2017 only a few weeks later.

Putting things right

In order to put things right National Westminster Bank Plc should:

- Re-work Mr D's account so that any additional interest, fees and charges applied as a result of the overdraft limit increases from 24 April 2017 onwards are removed. This means that from 24 April 2017 onwards interest can only be charged on the first £2,000 of any overdrawn balance.
- If the effect of removing all interest, fees and charges results in no balance, then any extra should be treated as overpayments and returned to O, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then NatWest should remove any adverse information from Mr D's credit file. †

† HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Mr D a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons set out above I partially uphold Mr D's complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask O and Mr D to accept or reject my decision before 30 October 2024.

Karen Hanlon
Ombudsman