

complaint

Mr S complains that National Westminster Bank Plc (NatWest) removed money from his current account, without his permission, in order to apply those funds to a NatWest credit card debt.

background

The adjudicator's background summary covered all the relevant facts and is known to both Mr S and NatWest so I won't repeat it in any great detail. Therefore, if I've not mentioned something it's not because I've ignored it, but because I don't think it's relevant to the issues. However in summary it is this;

Mr S obtained a credit card with NatWest in 2002. In 2004 he agreed to repay his debt on the card at the rate of £5 per month and made payments to an organisation called OSCC Ltd whom he believed NatWest had sold the debt to. OSCC Ltd was dissolved in June 2013 but payments continued to be made from Mr S's NatWest bank account thereafter until April 2017 when the last one was returned. Mr S's credit card account however shows that the monthly £5 credits were only applied to the credit card account up to and including November 2016. So Mr S naturally wants to know what happened to those £5 credits after November 2016.

NatWest say that Mr S's credit card account has been with their various external agents since 2004. Those agents were (and in this order); 'Intrum Justitia' 2004-2012; Experto Credite 2012-2016; Wescot Credit Services 2016-Feb 2017; Moorcroft Debt Recovery Feb 2017- July 2017; APEX Credit Management July 2017-January 2018, and ZINC January 2018 onwards.

NatWest said they had no knowledge of OSCC Ltd and confirmed that the debt was never sold to anyone. They also said that because no payments had been made to the account since November 2016, they wrote to Mr S in May 2018 explaining that they might apply their legal right of set off (ROSO) to transfer some money from his NatWest bank account to pay some of the credit card debt. And in May, NatWest did that by taking £1,591.83 out of his NatWest bank account.

Mr S complained to NatWest asking that they return the £1,591.83 to him. He also asked where his payments had gone to after November 2016. NatWest looked into his complaint but didn't think they had done anything wrong.

Mr S was unhappy with NatWest's response and so the adjudicator looked into the complaint but didn't think NatWest had acted unfairly. As Mr S didn't agree, the complaint has been passed to me for a final decision.

my provisional findings

I issued my provisional findings on this complaint on the 11 March 2020 which were thus;

I think there are two issues here. First there is the issue of what happened to the £5 payments taken from Mr S's bank account after November 2016, and secondly whether it was fair that NatWest took £1,591.83 by way of ROSO from his bank account.

Dealing with the last point first. Section 7.10 of the terms and conditions on Mr S's current account do allow NatWest to take funds from his account where a debt is payable to them. In fact NatWest gave notice of this to Mr S on the 3 May 2018. And when NatWest took the money from his account it left him with a balance of £888.68, and so I can't say NatWest has acted unfairly as it stuck to the terms and conditions and didn't leave his account without a reasonable amount of funds in it.

Turning to the other issue, Mr S's bank statements do show he has been paying £5 per month as he says to OSCC Ltd. I've seen a letter dated 21 February 2017 from OSCC Ltd (albeit it is signed off Intrum Justitia Ltd) that Mr S had a debit balance of £4,796.83 with NatWest. I've also seen a letter dated 23 February 2017 from OSCC Ltd. Both letters prove that NatWest must have instructed OSCC to act as their agent, because the letter of the 21 February 2017 has Mr S's credit card account number on, and although the letter of the 23 February 2017 doesn't have the account number on, it has the same balance as the earlier letter, and so on a balance of probabilities both letters refer to the same debt. I have also seen Mr S's payment book which has a reference number 212415466P and that number appears on both of the above letters. I therefore find that NatWest must be mistaken when they say they have not instructed OSCC Ltd.

That being the case it is clear that the payments Mr S made in December 2016, January 2017, February 2017 and March 2017 were on a balance of probabilities payments made towards his credit card debt. I accept that OSCC Ltd went into administration in 2013 but the bank account shows payments were being made under that reference and they were being applied to the credit card account up to November 2016. It must follow that NatWest will know where those payments went and to whom they were paid.

my provisional decision

My provisional decision was that I didn't think that NatWest acted unfairly by removing £1,591.83 from Mr S's bank account. I did however feel that Mr S had not been treated fairly regarding the payments he made to his credit card debt, after November 2016. I thought NatWest should repay those payments Mr S made after November 2016 and also pay him £100 in compensation to reflect the distress and inconvenience caused.

responses my provisional decision

Mr S responded to my provisional decision. The salient part of his response appears to me to be this; He had been making payments to his credit card debt as advised, and then whilst abroad the £1,591.83 was removed from his account. The reason for that he believes is because of a mistake by NatWest and its agent. He feels that the compensation ought to be that NatWest return the money it took and remove the interest and account fees he incurred because he went into overdraft from May 2016 until he recently managed to put his account back in credit. He also feels he should receive £53.47 in respect of the cost of telephone calls he made when abroad in an attempt to sort the matter out.

NatWest asked for further time to respond to my provisional decision and were granted an extension to the 17 April 2020. Nothing further has been received.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. The role of the Financial Ombudsman

Service is to resolve individual complaints and to award redress where it is appropriate so to do.

What I need to decide is whether NatWest acted fairly and reasonably in its dealings with Mr S. I take into account both NatWest's view and that of Mr S. The aim of my decision is to reach a fair and reasonable decision based on the facts of the case.

Where the evidence is incomplete, inconclusive or contradictory, I am bound to reach a decision on the balance of probabilities – in other words, I consider what is more likely to have happened in the light of that evidence and the wider circumstances of the case. Looking at the available evidence, I think we have an unfortunate situation here.

I adopt my provisional findings and shall not repeat them as they are set out above. Mr S has challenged my view but I do not think it requires change. The reason for that is that although Mr S was in a payment arrangement with NatWest and its agent, NatWest were entitled under the terms and conditions to apply their ROSO and remove the funds as they did from Mr S's account. Notice was given of that action, and although it appears Mr S was abroad at the time, NatWest nevertheless acted within the terms and conditions. So I can't say they have acted unfairly.

my final decision

My final decision is that I don't think that NatWest acted unfairly by removing £1,591.83 from Mr S's bank account.

I do however feel Mr S has not been treated fairly regarding the payments he made to his credit card debt, after November 2016. NatWest must repay all those payments Mr S made after November 2016 and in addition pay him £100 by way of compensation to reflect the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 May 2020.

Jonathan Willis
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