

complaint

Mr S complains that he has suffered:

- around a £10,000 exchange rate loss; and
- an interest rate loss

because of the way National Westminster Bank Plc (NatWest) carried out his instructions to close his deposit account and transfer the balance to his daughter's account in Australia. He also says that NatWest failed to carry out his instructions to transfer 20,000 Australian Dollars to his daughter's account. He is represented by his daughter.

background

In August 2011 Mr S instructed NatWest to urgently transfer the balance of his account (over £300,000) to his daughter's account in Australia, in Australian dollars (AUD) and then close his account. NatWest converted the Sterling into AUD and sent the balance to an Australian bank (B) for onward transmission to Mr S's daughter's account at one of B's provincial branches. It then closed his account, all within two weeks of receiving his instructions.

Mr S is an Iranian national and has been living in Iran for many years. Sanctions were in place affecting transactions involving Iran. B asked NatWest for more information about the transfer. NatWest provided this information on a number of occasions, but some five and half months after Mr S's original instruction B eventually declined to accept the transfer as 'contrary to bank policy'.

In the interim, and nearly five months after his original instruction, Mr S twice asked NatWest to make a transfer of 20,000 AUD to his daughter's account because he said this was below the sanction transfer limit, and his daughter needed the money urgently. NatWest did not carry out his instructions.

After B refused to allow the transfer NatWest held the money on a NatWest AUD suspense account because Mr S no longer had an account with NatWest. The money was then converted into Sterling and held on a NatWest Sterling private account.

After that, some eight and a half months after the original instruction, NatWest sent a Sterling cheque payable to Mr S's daughter to her home address in Australia, which she successfully banked.

Mr S says that he has suffered the following financial losses as a result of how NatWest dealt with this:

- an exchange rate loss of just over £10,000; and
- an interest rate loss.

He also says that both he and his daughter suffered significant distress and inconvenience because they did not have access to the money for a long time, and his daughter needed the money to meet her living expenses and education costs.

our adjudicator's view

The adjudicator did not recommend that the complaint should be upheld. Whilst he sympathised with the situation Mr S found himself in, he considered that NatWest had not made any errors, and therefore it could not reasonably be required to meet Mr S's losses.

Mr S's daughter said her father disagreed with the adjudicator, and said, in summary, that after two months of ordering the transfer he was told that B had rejected it. He then tried to get NatWest to reinstate his account, and transfer the money back into it because then he could send the money gradually to Australia to avoid the sanctions. But he was told by NatWest that it expected the transfer to succeed each time, and so this was not arranged. She said, after the second rejection, her father asked NatWest to send only 20,000 AUD because she urgently needed some money to meet her living and education costs. But NatWest did not arrange this causing further stress and inconvenience. She said her father should have been given options other than a Sterling cheque once the money had been returned.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to NatWest on 8 October 2013. I summarise my findings:

how NatWest dealt with the transfer request

NatWest carried out Mr S's instructions within two weeks of receiving them. But, the transfer was initially delayed by NatWest whilst its payment filtering unit looked into it further. Mr S is an Iranian national. He had been living in Iran for some time, and sanctions applied at the time. By mid-October NatWest had completed its investigations. It arranged for the money to be sent to B (*first transfer*). I was satisfied that NatWest acted reasonably, and in a timely way, given the sanctions that applied.

Four days after the first transfer, B asked for more details. It gave NatWest three working days to respond. Three weeks after that NatWest responded to some of the questions raised by B, but its own payment filtering unit intervened again. A further 14 days passed before the transfer was made again to B (*second transfer*). I recognised how inconvenient this must have been for Mr S and his daughter, but I did not consider that NatWest had acted unfairly or unreasonably bearing in mind the questions it had been asked, the information it had to obtain from Mr S, and the sanctions that applied.

A day after the second transfer B came back to NatWest asking for answers to all its original questions. NatWest responded the next day. A week after that B responded to say that the transfer request had been treated as "null and void" and a fresh transfer request should be made. NatWest completed the fresh transfer request two days after that (*third transfer*). Again I am satisfied that there was no undue delay on the part of NatWest and it did all it could in the circumstances to enable the transfer to proceed.

Four days after the third transfer request B asked for extra information about the transfer. It again gave NatWest only three working days to respond. NatWest responded in this time providing answers to the questions raised.

Three days after that, by then mid December 2011, NatWest learnt that B had cancelled the transfer. NatWest made a few more attempts to make the transfer. In February 2012 B finally

told NatWest that it would not allow the transfer to proceed because it was “contrary to bank policy”.

I sympathised with Mr S and his daughter. I recognised that it must have been extremely inconvenient and distressing not to have access to a significant amount of money during this period. But I considered that NatWest had done all that could be reasonably expected of it to enable the transfer to proceed. I concluded that I could not reasonably hold NatWest responsible for the transfer not proceeding, or for the delays.

transfer of 20,000 AUD

In January 2012 Mr S contacted NatWest twice and asked it to transfer 20,000 AUD to his daughter’s account urgently, if it was going to take longer for all the balance to be transferred. NatWest cannot say precisely why these instructions were not acted upon at the time, but think this was likely to be because of the sanctions imposed, and the fact that it was still trying to arrange for the full closing balance to be transferred.

I concluded that it was feasible that B may not have been prepared to accept a transfer of 20,000 AUD at that time, particularly as it was aware Mr S had tried to transfer a much larger amount. This might have been seen as circumventing the sanctions that applied. I was satisfied that at the time NatWest still believed that it would be possible to transfer the full amount, particularly as its own payment filtering unit had not identified any reasons why the payment could not proceed.

But, I found that it would have been reasonable to expect NatWest to respond to Mr S’s instruction, either by trying to transfer the reduced amount, or explaining its reasons for not doing so. Mr S had explained the financial pressures that his daughter was facing, so I concluded that I was satisfied that NatWest’s failure to respond would have added to his pre-existing distress. I said this service could not generally order banks to pay compensation to someone other than the bank’s customer and so I could not require NatWest to pay Mr S compensation for the distress and inconvenience she was caused by this. I considered that £200 compensation was a fair amount of compensation for adding to Mr S’s distress, having regard to the general level of awards made by this service and the particular circumstances.

exchange rate loss

Mr S said that NatWest should not have re-converted the money into Sterling once it knew the transfer was not possible, because by doing so he suffered an exchange rate loss.

I accepted NatWest’s position, it said if it had issued an AUD cheque payable to Mr S’s daughter, it might have been perceived as attempting to circumvent Australian payment compliance, which could result in the regulatory authorities taking action against it.

Mr S no longer had an open bank account with NatWest to pay the money into, but had his original account remained open the money would have had to be converted back into Sterling in any event. I did not consider that NatWest had acted unfairly or unreasonably by converting the money back into Sterling. I was also satisfied that it obtained the best rate it could. It used the interbank exchange rate with no profit being made on the conversion.

I concluded that I could not reasonably hold NatWest liable for the exchange rate loss therefore.

interest rate loss

NatWest knew in February 2012 that it was not going to be possible to transfer the money as per Mr S's instructions. But it was not until April 2012 that it issued the Sterling cheque payable to Mr S's daughter. I could see there was some delay whilst NatWest worked out how to proceed, due to the unusual circumstances it was presented with. Mr S no longer had an account with it, he was living in Iran and transfer sanctions applied. I concluded that reasonably NatWest should pay Mr S interest on the money it was holding.

Mr S's money prior to closure of his account was invested in a Bonus 30 Savings account earning around 1% per annum. I found that it would be reasonable for NatWest to pay Mr S interest on £319,334.60 (the converted amount) between the date in February 2012 it was told that the transfer would not proceed, and the date in April when the cheque was cashed by Mr S and the money cleared NatWest's account. Interest should be paid as if the money had been invested in Mr S's Bonus 30 account during this period, because the money would have been put back into that account had it not been closed.

Subject to any further representations made by the parties, for the reasons explained above, my provisional decision was that I was minded to uphold Mr S's complaint in part. I proposed to order NatWest to pay Mr S in full and final settlement of his complaint:

- interest on £319,334.60 between the date in February 2012 that it was notified that the transfer would not proceed, and the date in April 2012 that the cheque payable to Mr S cleared National Westminster Bank Plc's bank account, as if the money had been invested in Mr S's Bonus 30 account during this time;
- £200 compensation for distress and inconvenience.

Mr S's representations on my provisional findings

In summary, Mr S made the following representations in response to my provisional decision:

- according to NatWest's principles urgent transfers should take no more than four days to complete. Had Mr S known that it would take as long as it did to transfer his money he would never have closed his account and asked for all the money to be sent at once;
- Mr S was told by NatWest in November 2011 that the transfer could not proceed. He produced a letter he says he sent to NatWest in November 2011 asking to reopen his NatWest bank account and have the money paid back into it in Sterling. He said his account had been re-activated in the past when he experienced a similar problem trying to transfer money to another country. Therefore, any further attempts made by NatWest to transfer all of his money in one go were therefore contrary to his instructions. But, NatWest told him that it intended to transfer his money again and it expected the transfer to be successful this time;
- Mr S managed to get a second Australian Bank (C) to agree to accept the transfer. So in mid-January 2012 he instructed NatWest to first transfer 20,000 AUD to C. And then later to send the balance to C. A week later he told NatWest there was a second option. This was to send an international cheque in AUD to his daughter's home address and C would pay it in to her account;
- Mr S said the sanction regulations applying to transfers over 20,000 AUD were not imposed until March 2012;

- Mr S felt that £200 compensation was inadequate, particularly as he had to borrow money in Australia to cover his daughter's expenses; and
- the cheque payable to his daughter did not clear NatWest's bank account until September 2012.

In response to Mr S's representations I asked him to explain why it took so long for NatWest's cheque issued in April 2012 to clear. Mr S said the money was held by NatWest until the cheque was received by her, signed by her and resent to NatWest by C to be cleared. The money arrived in her account in September 2012.

NatWest's representations on my provisional findings

NatWest said it had nothing to add to my provisional decision. Having received Mr S's representations I asked NatWest what actions, if any, it took in response to Mr S's November 2011 letter asking to reopen his account and have the money re-credited to it. NatWest said that it could not see that it had received this letter before February 2012. It said it had not responded directly to Mr S on this point, however, it could not reopen the account once it had been closed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, including looking very carefully at Mr S's additional representations. Having considered these, my conclusions are in the main the same as set out in my provisional decision. But I set out my additional comments below.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I do not doubt that Mr S and his daughter suffered significant distress and inconvenience as a result of this. I sympathise with the situation they found themselves in. But in reaching my decision I must look at the appropriateness of the actions taken at the time, not at how things might have been handled differently with the benefit of hindsight.

When Mr S asked to close his account, and transfer the full balance of his account in AUD, I think it unlikely that he or NatWest anticipated how difficult it would be to carry this out. NatWest still believed up until February 2012 that it would be possible to transfer the money in full to B. It was prevented from doing so because B would not accept the transfer. I do not consider therefore that NatWest acted contrary to its own principles. Due to the sanctions that applied further checks were made. I consider that NatWest handled these in a timely way given the circumstances.

I accept what NatWest has said about not being able to reopen the account once closed. But I consider that it could have told Mr S that this was not possible. Mr S has not suffered any financial loss through NatWest's lack of response to his November 2011 letter – because it was not able to reopen the account. However I find that more likely than not its lack of explanation would have resulted in him suffering some distress and inconvenience.

I consider therefore that NatWest should pay Mr S £75 compensation for this communication failure.

I do not consider that NatWest acted unreasonably by opting to send Mr S the money by international cheque. C had indicated that it would be prepared to allow a cheque to be paid into her account. Nor do I consider that it was unreasonable to send her a cheque in Sterling, as the money was being held in a Sterling account. And I am not satisfied that more likely than not NatWest knew at that time that Mr S would not be able to access the money until September 2012.

Mr S said the sanction regulations applying to transfers over 20,000 AUD were not imposed until March 2012. However, it was not NatWest's application of the sanction regulations that prevented the transfer going ahead, but B's. I remain of the view that NatWest did all that it reasonably could to enable the transfer to B to proceed.

Mr S felt that my proposed award of £200 compensation was inadequate, particularly as he had to borrow money in Australia to cover his daughter's expenses. I am sorry to disappoint Mr S but, I consider that this award (along with the further award of £75 set out above) is in line with the general level of awards made by this service for distress and inconvenience. And I cannot fairly require NatWest to meet his borrowing costs, as I have found that it was not responsible for the transfer not proceeding, or the delays.

Mr S said although NatWest issued a cheque in April 2012 the money did not reach her C bank account until September 2012. I have not seen anything to show that NatWest was responsible for this delay. Cheques of this nature usually take around a month to clear and therefore I consider that it would be reasonable to require NatWest to pay interest on £319,334.60 between the date in February 2012 that it was notified that the transfer would not proceed, and 12 May 2012 (one month from the date of issue of the cheque), as if the money had been invested in Mr S's Bonus 30 account during this time.

my final decision

My decision is that I uphold Mr S's complaint in part. In full and final settlement of it I order National Westminster Bank Plc to pay Mr S:

- interest on £319,334.60 between the date in February 2012 that it was notified that the transfer would not proceed, and 12 May 2012, as if the money had been invested in Mr S's Bonus 30 account during this time;
- if National Westminster Bank Plc considers it has to deduct tax from the interest element, it should send Mr S a tax deduction certificate when making payment. He can then use that certificate to try to reclaim the tax, if he is entitled to do so, and
- £275 compensation in total for distress and inconvenience.

Kim Parsons
ombudsman