

complaint

Mr C complains that National Westminster Bank Plc (NatWest) took money from his bank account to pay off a credit card debt without warning. He says the money was not his and it left him unable to pay some priority debts.

background

In January 2018, NatWest transferred over £9000 from Mr C's current account to pay off a credit card debt that he held with it.

Mr C has subsequently told us the money in his account wasn't his and that he accepted a large payment into his account on behalf of a friend. Mr C also said that he was abroad when NatWest took the money – that NatWest hold an address abroad for him and it should have tried to contact him overseas.

Mr C has told us that NatWest ought to have realised that he had priority debts coming out of his current account and he was left short and unable to pay his bills and it left him in financial difficulties.

Mr C doesn't think NatWest has followed its own procedures when exercising its 'right of set off' and it hasn't followed the relevant industry guidance.

NatWest has said it had made numerous attempts to contact Mr C about his credit card account being in arrears and that no payments had been made since January 2014. It said that following these attempts it wrote to Mr C in December 2017 at the address it held on his account.

NatWest said the letter explained that it may use its 'right of set off' if Mr C did not contact it to discuss repayment of his credit card debt. In January 2018 NatWest wrote to Mr C again to inform him it had exercised its 'right of set off' to clear one of his outstanding credit card debts.

Mr C complained to NatWest and unhappy with its response he brought his complaint to this service. One of our investigators looked into things and didn't think NatWest had done anything wrong. He thought NatWest did attempt to contact Mr C before they used set off, left sufficient funds for essential bills it knew about and wrote to Mr C promptly to tell him it had taken the funds.

Mr C has disagreed with our investigators opinion – in summary he maintained that NatWest hadn't followed industry guidance, didn't leave him with sufficient funds and didn't communicate the right of set off as it should have done. In view of Mr C's objections the matter has been passed to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Mr C has set out his account of events in considerable detail. I trust he won't take it as a discourtesy that I've condensed his complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.

This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions

or take directions on how a complaint will be looked at or what questions should be asked or answered.

I don't doubt that this is very important for Mr C, but although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. But I want to reassure Mr C that I've considered all of his submissions prior to our investigators view on 8th March 2018, as well as the further submissions Mr C has made to us following our investigators opinion. Which have included submissions from Mr C on 9th, 20th, 28th March 2018 and 3rd, 6th, 11th, 13th, 20th April 2018.

Firstly I should make it clear that I'm satisfied that NatWest had the right to set off the balance of his credit card account against his current account. Legal principle and the terms and conditions of the current account allow NatWest to do this.

did NatWest notify Mr C?

Banks aren't required to give customers advance notice of the *specific intention* to use right of set off. But they would be expected to provide general information about the possibility of using right of set off before doing it. In this case I've seen that NatWest did write to Mr C in December 2017, in this letter it explained that if it was unable to make arrangements for payment with Mr C, for his credit card debt, then it may exercise its right to set off. I can also see that NatWest wrote to Mr C in January 2018 to explain that it had exercised its 'right of set off' – this is what I would've expected it do. So, although I appreciate it was an unpleasant shock to find NatWest had offset the credit balance in Mr C's current account against the credit card debt, it was allowed to do this.

Mr C has said that NatWest didn't make a genuine attempt to contact him. He's said that he was abroad and NatWest made no attempt to contact him on the international number, or at the international address, it held for him.

As I've mentioned before NatWest, although it did in this case, wasn't required to give Mr C advance warning of when it would exercise its right of set off - that's because, if it were obliged to give notice, some customers might withdraw the money before the end of the notice period. I've seen that NatWest sent letters to the address it held on file for Mr C's current account in the UK. I appreciate Mr C says this didn't go far enough – but I wouldn't expect NatWest to make exhaustive attempts to contact Mr C at all of the addresses it may hold for a customer across different accounts. NatWest should've provided general information that it had the right of set off and prompt notification when it had exercised its right of set off - and I'm satisfied that it did this.

From the information Mr C has sent to us I can see the address NatWest has written to is the same as that he holds his mortgage for and the property upon which he is paying his council tax. I've seen that NatWest do hold a different address for a business credit card, but I can't see Mr C has ever asked NatWest to use this address for his other accounts. But for the reasons mentioned, overall I find that NatWest has made reasonable attempts to contact Mr C and I wouldn't have expected it to do anymore.

the money wasn't intended for Mr C's use

Mr C has told us that the money NatWest took was not his and that it was paid into his account on behalf of a friend. From what I've seen I agree that a third party has instructed for a large sum to be paid into Mr C's account.

I've looked closely at Mr C's NatWest bank statements from the time and I've seen a large transaction paid into his account (over £18,000). For the period following this I can see Mr C has made numerous point of sale transactions for what appear to be non-essential spending, which reduced the balance to c. £11,000 at the time NatWest exercised its right of set off. In view of Mr C's spending on the account I'm not persuaded that the funds were not intended for his use – this is supported by Mr C's own testimony where he has told us that he needed the funds for his priority bills, suggesting to me that it's more likely than not that the funds were for his use.

the money taken was for Mr C's priority debts

I've thought carefully about what Mr C has told us about his financial circumstances and that he was unable to pay his priority debts. Mr C has provided us with evidence to show he was in arrears with his mortgage and his council tax – alongside this he also had an imminent payment due for healthcare. I understand this must have been a difficult time for Mr C.

From looking at Mr C's statements I can't say that it would have been abundantly clear to NatWest that Mr C had arrears or priority debts and I don't think NatWest had any reason to suspect that by applying its right of set off, it would cause financial hardship. But nevertheless the rules do allow me to instruct NatWest to return all / or some of any amount 'set off' if priority debts become apparent after the event – NatWest has agreed with this.

Some of the evidence Mr C has provided is from around c.2014, which pre-dates when the set-off took place so I've attached less weight to this evidence. From the evidence Mr C has sent, from around the time of set-off, I can see that there were payments due on his council tax and mortgage – but the evidence also shows that some payments are being made.

In this case I've also seen that following the set-off there were sufficient funds remaining in Mr C's account to enable him to make payments against his bills. I can't see that he used the funds for this purpose and it would be unfair for me to hold NatWest responsible for this. In any event, Mr C has also told me that, while these were a priority at the time – he has now made alternative arrangements and taken care of those immediate issues and I'm glad that he's been able to do this. With all of this in mind though I see no reason to ask NatWest to consider returning any of the funds it set off.

I know Mr C will be disappointed with my decision but overall, with all things considered, I can't fairly say that NatWest did anything wrong when it exercised its right of set off – so I won't be asking it to do anymore.

right of set off in the future

Finally, I can see Mr C requested that NatWest withhold from exercising further right of set off on another credit card debt he holds with them. As is there right NatWest declined this, but it has invited Mr C to contact it to make payment arrangements on the other credit card debt and I would encourage Mr C to consider this.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 October 2018.

Stephen Wise
ombudsman