

complaint

Mr M complains that National Westminster Bank Plc (NatWest) should have done more to prevent him from making large withdrawals from his accounts for the purpose of gambling.

background

Mr M made a previous complaint about Nat West not doing enough to prevent him from making withdrawals to fund his gambling habit. An ombudsman did not uphold his complaint but did suggest that Nat West put a flag on his account to help prevent future large withdrawals.

Mr M continued to withdraw large sums of money after the ombudsman's decision and which he again gambled away in a casino. Mr M feels that Nat West has not done enough to help him.

Nat West said that it did not know that Mr M had a problem with gambling until he made his first complaint. It feels it has not done anything wrong and has in fact tried to help Mr M but ultimately it cannot prevent him from accessing his own money. It said it had tried to help him in a number of ways;

- it offered to put a marker on his savings account to prevent any large withdrawals but Mr M said he didn't want that and would prefer to give his cards to his mother;
- when he wanted to withdraw £5,000 in cash from a branch they spoke to him about it and told him to get legal advice first but he insisted and went ahead with it anyway;
- they put a block on any transactions between the 28th and 31st July at his request;
- they held his debit card at their Leeds branch and agreed to restrict his expenditure to a day to day cash in branch basis, but Mr M then re-ordered a new debit card.

Nat West also said that they did not have the facilities or resources to monitor continually a customer's account and as Mr M retained his mental capacity they could not stop him withdrawing his money if he wished.

Our investigator looked into Mr M's complaint and did not uphold it. He found that the Nat West had tried to help Mr M but he had not co-operated with them. Mr M didn't agree with our investigator's view and so the matter has come to me for a final 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 M feels strongly about this and I do understand why. So I appreciate he's going to be disappointed that I've reached the same view as our investigator and for much the same reasons.

At the heart of this complaint is Mr M's ability to do with his money as he pleases. The Mental Capacity Act states that a person is assumed to have the necessary mental capacity to make decisions for himself until such time as it is established that he lacks that capacity. And, that a person is not to be treated as being unable to make a decision merely because he makes an unwise decision. Mr M argues that Nat West ought to have done more to help him but there is only so much it can do when a person has the capacity to manage his own finances, and in Mr M's case that means Nat West would require his co-operation.

Mr M has quoted from a letter from his doctor which provides a diagnosis of anxiety and depression and recites his pharmacological treatment. But, what it does not say is that Mr M lacked the necessary mental capacity to make decisions about his finances, and so even with this evidence Mr M has to be considered as fully capacitous. That means if he wants to make what others or he might later feel are unwise decisions, then that is entirely a matter for him.

Nat West tried on a number of occasions to help Mr M by offering to place a flag on his savings account, trying to counsel him against the £5,000 withdrawal, and holding onto his debit card so that he had to make daily cash withdrawals, but he refused the advice and re-ordered a debit card. I accept that Mr M made some very large withdrawals of cash and that he did so at a time Nat West were aware of his gambling habit. However, Mr M has demonstrated that he was not receptive to the advice Nat West gave him or to other measures put in place to try to help him.

I don't think it is reasonable to expect Nat West to have intervened or made contact with Mr M when each large transaction was made. Even if they had, it is more likely than not that Mr M would have not complied with or accepted Nat West's advice. And as he had the legal right to withdraw his money then there was nothing Nat West could have done to stop him. So, I agree with our investigator that in the circumstances of this complaint Nat West did act reasonably and pro-actively and has not acted unfairly.

my final decision

For the reasons I've explained, I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 January 2018.

Jonathan Willis
ombudsman