

complaint

Mr B complains that National Westminster Bank Plc has registered a marker on the database at CIFAS the UK's fraud prevention service.

background

Mr B says that he had not been using his bank account with NatWest. He kept his debit card and his PIN in his wallet and he'd lost this in March or May 2017. He says that he knew nothing about credits totalling £2,000 paid into his account on 4 and 5 March 2017 and withdrawn in cash on the same days. Or that his account with NatWest had been closed and a fraud marker registered at CIFAS until he was unable to open a bank account with another financial business.

NatWest says that the funds paid into Mr B's account had been reported as fraudulent and that it considered Mr B had authorised the withdrawals. NatWest said it had written to Mr B to tell him it would be closing his account and had sent him statements. And it said it had registered the CIFAS marker in line with the required criteria and would not be removing it.

Our investigator did not recommend that the complaint be upheld. She said that:

- Mr B's account had not been used since December 2016 but on 3 March 2017 the daily cash point withdrawal limit had been increased to £1,500.
- The account had been registered for online banking in February 2017 and had been accessed regularly online for account enquiries on 4 and 5 March 2017.
- Mr B had been unable to explain why he didn't report the loss of his card and PIN until December 2017 and he'd been inconsistent about when the loss had taken place.
- She thought it most likely that Mr B had authorised the withdrawals and as a result said that NatWest had sufficient evidence to register the CIFAS marker.

Mr B did not agree. He said that he had his PIN in his wallet with the card as he had just received a new PIN. He did not have any knowledge of what was happening with his account and did not request the increase in the daily cash withdrawal limit. The only time he knew what happened was when he tried to open an account with a different financial business. He'd then contacted CIFAS and found out that NatWest had told it that he'd fraudulently misused his account.

my findings

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

I need to take into account the Payment Services Regulations 2009 in considering this complaint. These state that a payment can only be authorised if it was consented to. So it's not enough for it to be authenticated, say with a card and PIN.

I also need to consider whether the report to CIFAS was made fairly. On this point, NatWest needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

So I will be thinking about the following areas in looking at his complaint:

- How the withdrawals were made and what happened to the card and PIN?
- Did Mr B consent to the withdrawals including by allowing someone else to make them?
- Did NatWest have sufficient evidence to apply the CIFAS marker?

the withdrawals

It's not in dispute that the money paid into Mr B's account was not due to him. There were five payments in total with £1,500 paid in on 4 March 2017 and £500 on 5 March 2017. I've seen evidence that these were reported as fraudulently obtained by a different financial business to NatWest.

I can see that these amounts were withdrawn at different cash point machines as the money had come in. I'm satisfied that these cash withdrawals must have been made with the genuine card and the correct PIN for the account.

I need to think about whether Mr B consented to these as that's key here. Our investigator's already given a description of the way the account was used which is helpful. As she's said the account was only set up for online banking the week before these transactions and the withdrawal limit increased the day before the credits. Mr B's position is that he didn't do that or find out about the credits by accessing his account online himself. So I need to decide what is most likely taking into account the available evidence. To find that Mr B didn't consent to these withdrawals I'd need to think all of the following were most likely:

- An unknown third party was able to log on to Mr B's account online during this period and make multiple account enquiries to check when the money was received. The evidence I've seen is that these account enquiries were made from the same IP address used to register for online banking in the first place.
- That person was also able to obtain sufficient information to be able to arrange for the withdrawal limit on the account to be increased which allowed the higher daily withdrawals to be made.
- After a period of not using his account Mr B decided to keep both his card and PIN in his wallet. And then not to report these were both lost whenever he found out leaving at least a seven month gap.
- That third party was able to obtain his card and PIN and had access to his account so that the money could be withdrawn as it was received.
- Mr B did not receive a copy of the letter from NatWest about the closure of his account or any statements it sent to him at the correct address it had on record.

I'm afraid that these are not all findings I'm able to make as most likely based on the available evidence. I'm afraid this means I conclude that either Mr B made these withdrawals or that he authorised someone else to have full access to his account to do so.

the CIFAS marker

NatWest says that it applied the CIFAS marker because Mr B received and withdrew fraudulent funds and it decided to close his account. So I've looked at whether NatWest was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that NatWest needs to have

enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr B's account of events and the evidence NatWest has provided, I'm satisfied that NatWest had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr B received fraudulent funds into his account and didn't report this to NatWest at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- NatWest had grounds to believe that Mr B had used fraudulently obtained funds based on the evidence it had.

Given my findings I also think that NatWest acted reasonably in closing Mr B's account. I appreciate the impact of the marker on the ability of Mr B to open an account or obtain credit elsewhere in future. But I don't have a basis to require NatWest to take any further action.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 January 2020.

Michael Crewe
ombudsman