

complaint

Mr J has complained National Westminster Bank Plc won't refund transactions he didn't make.

background

In early 2015 Mr J got a letter from his mortgage provider saying they'd not been able to collect his mortgage payments by direct debit because of insufficient funds. He realised money was missing from his accounts. Mr J went to his bank to complain about transactions his ex-partner had made. These involved transactions from a current account and savings account that had been set up in his name more than five years before. The amount in dispute was £35,032.13.

NatWest wouldn't refund him. After Mr J's ex-partner was convicted of fraudulent activity and sentenced, NatWest rejected his request for a refund again. Mr J brought his complaint to the ombudsman service. I'll call Mr J's ex-partner Miss B.

Mr J told us these accounts had been opened to build up a fund for building work to his home, as well as providing some contingency. Miss B had subsequently opened a number of credit cards and accounts and spent about £135,000 without his knowledge or permission. He admitted being with her when the savings account was set up in 2008 but knew nothing about the account in 2009 which he believed she'd opened fraudulently using a fake signature.

He agreed he wasn't really financially savvy and had allowed Miss B to pay money into the account on his behalf. Like when he received a cheque as an endowment policy pay-out and money he received from his employment.

Our investigator reviewed the evidence. This included records from NatWest about the account openings and evidence collated by the police and used in the prosecution of Miss B. This included both Mr J's and Miss B's witness statements. It was clear Miss B had control over Mr J's finances and had used his money for her own purposes. This included paying household bills, food, shopping and gambling. She admitted using his money without him knowing or authorising those individual transactions. She'd also applied for other credit cards and accounts in Mr J's name.

Our investigator agreed there was no doubt Miss B was guilty of fraud as a court had made this judgement. We were not looking at the bank's liability under criminal law but under the relevant payments legislation, and our fair and reasonable remit. He felt Mr J had given Miss B *apparent authority* to use and manage his accounts. Therefore he couldn't ask NatWest to refund Mr J.

Mr J disagreed with this outcome. He argued that as the signature for the account opened in 2009 was not his, then he could not be held liable for the numerous withdrawals made by Miss B. He wasn't even aware there was a debit card for the account.

Mr J's complaint has been referred to an ombudsman for a final decision to be made.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as our investigator. I'll explain why.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The Payment Services Regulations are the relevant law here. These primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing that's had a marked impact on the decision I'm making here. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what NatWest, Mr J and the police have shared with us.

Firstly I can see the timeline of events, each party's testimony and how the transactions were made were comprehensively covered in our investigator's view of 11 February 2020. I don't intend to repeat everything that was said there. I will, of course, refer to those aspects which form the basis of my decision. I can reassure Mr J and NatWest I've read the file thoroughly.

The following summarises what I've considered:

- Miss B was found guilty of fraudulent activity in 2017. She admitted to stealing £7,256.26 from these accounts to pay her own Council Tax. In addition she gambled £7,187.45 of Mr J's money. She confirmed these funds came from the current account.
- These figures differ to those that Mr J submitted as money she withdrew from his accounts without his authorisation.
- Miss B told the police Mr J knew about both accounts being opened, even though she'd opened the second account herself. As they were saving to carry out building works to the house, Mr J allowed her to withdraw cash which was used to pay the builders.
- I can see the current account was opened in December 2009.
- Evidence from NatWest shows the signature to open the account differed from Mr J's signature used to open the savings account in October 2008. Or in fact his signature as attached to his police witness statements.
- The email address attached to the current account record was Miss B's.
- Mr J has said Miss B wanted him to set up online banking but as he didn't like using computers he didn't agree to this suggestion. The evidence shows Miss B in all likelihood set up online banking herself. Miss B used online banking for transfers from the savings to the current account.
- The current account is used for a range of normal household expenses. NatWest originally felt it would be very difficult to disentangle normal expenses that could be considered as Mr J's from those Miss B made without any authority.

- There are numerous credits into the current account. From all the evidence this appears to be Mr J's wages which he gave to Miss B to pay into his account. He may well not have known which account the money was paid into.
- There is also at least one automated credit from HMRC paid into the current account. This suggests that Mr J must have provided the account details to HMRC. Alternatively Miss B may have helped Mr J out with his tax returns – as he admits she managed his finances overall – and she may have provided the account details to HMRC. I've considered both options in helping me make my decision.
- Mr J's witness statement to the police confirmed he knew of the existence of both accounts even though he'd not been involved in opening the current account.

Like our investigator and taking into account the police evidence, I don't believe Mr J authorised the transactions in dispute. Most of these were made using card and PIN which I believe remained under Miss B's control at all times.

But when I've looked at why it would be that Miss B had control of Mr J's card, I've seen nothing to suggest she was doing this in a completely deceitful way. When Mr J first contacted NatWest he referred to a series of transactions he'd authorised Miss B to make. These were for building supplies. It's difficult to imagine Mr J thought Miss B was making these payments without a debit card – particularly as on occasion they were together when these purchases were being made. I think it's most likely Mr J knew Miss B had a card for either one or both of the accounts.

Mr J has been clear that he allowed Miss B to manage his finances. He also knew of both accounts and that credits were made to them – otherwise how were they building up a fund to pay for the building work? He also knew certain transactions were being made – on his behalf – by Miss B.

Under the Payment Services Regulations, we consider the issue of the relationship between the account-holder, formally Mr J, and the person making the transactions. In this case that's Miss B. I think, taking into account all the circumstances of this case, Mr J authorised Miss B to act as his agent: to look after his finances, and make transactions on his behalf. He may not have thought about it in this way of course.

He didn't differentiate between those transactions he allowed her to make and those that she made without his specific authority. I don't doubt there were individual transactions which Mr J didn't authorise. But because of the nature of their relationship and the authority he gave her to manage his finances overall, he was giving her *apparent authority* to carry out those transactions he subsequently disputed.

In coming to this conclusion I'm aware Mr J didn't open the current account himself. I believe the evidence supports this – and it's certainly what Mr J has told us. However that fact alone doesn't mean he should be reimbursed for transactions that occurred on that account. I say this partly because I believe if this account hadn't existed, this really wouldn't have made any difference to what then happened. And all the evidence shows Mr J did know about this account. He made the choice – and I appreciate this may seem harsh – not to pay close attention to his finances. I don't believe it would be fair and reasonable to say that even though Mr J didn't open this account, he wasn't aware of the transactions that took place by giving Miss J authority to manage his finances.

I appreciate how bitterly disappointed Mr J will be in this outcome. He put his trust in his partner to help him out with his finances. This turned out to be massively misplaced. Miss B

undoubtedly stole a lot of money from him. However I don't believe it would be fair, taking into account the relevant law on a bank's liability for disputed payment transactions, to instruct NatWest to repay Mr J.

my final decision

For the reasons I've given, my final decision is not to uphold Mr J's complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 June 2020.

Sandra Quinn
ombudsman