

complaint

Miss W complains National Westminster Bank Plc will not refund some disputed transactions. She also complains it did not treat her sympathetically in how it demanded she repay the overdrawn balance.

Finally, she complains it unfairly placed a CIFAS fraud marker against her name.

background

Miss W complained about several transactions carried out on her account over a weekend in February 2018. She said she had neither made these transactions nor authorised them. The money spent from her current account not only included an amount from an unauthorised overdraft facility – but also some money which had been transferred from a savings account into the current account via online banking.

NatWest did not uphold her complaint. The transactions were made using Miss W's genuine card and PIN and as there was no identified compromise of the PIN, it concluded Miss W must have made them herself. In relation to the transfer from the savings account into the current account, this payment was made via Miss W's online banking. For this to be possible, the person making the transfer would need access to secure information which only Miss W should have knowledge of.

With regards the overdrawn balance, it had agreed to place the recovery for this on hold – but subsequently defaulted Miss W's account and sold the debt on to a third-party debt recovery agent.

When Miss W brought the complaint to this service, our investigator looked into matters for her. She (the investigator) thought NatWest had not dealt with Miss W's complaint fairly in relation to the overdrawn balance and the CIFAS marker.

In relation to the disputed transactions, our investigator didn't think she could ask NatWest to do anymore because she thought the evidence suggested Miss W had authorised someone to carry out the transactions by disclosing her PIN and online banking details. But she did ask NatWest to do the following:

- remove the default marker from Miss W's credit file
- contact her to arrange a repayment plan for just the overdrawn balance – with all charges and interest removed
- remove the CIFAS marker
- pay Miss W £500 for the distress and inconvenience caused to her by the placing of the default marker and the CIFAS marker

Miss W agreed with the investigator's findings – but NatWest did not. It said the CIFAS marker had been correctly placed because Miss W had attempted to have her money returned to her despite both NatWest and now this service concluding that she had authorised the payments.

It also disputed the redress figure of £500 and asked for an ombudsman's 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.

As Miss W accepted the investigator's view in relation to the disputed transactions, I do not intend to address that aspect of her complaint apart from where it might be relevant to my findings on the other aspects of the complaint. However, I should say from the outset that I am satisfied that these transactions were authorised. The exact type of authorisation will be considered below.

CIFAS

The test for recording a CIFAS fraud marker is a high one.

NatWest needs to have satisfied the following:

- *that there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted;*
- *that the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.*

I do not think NatWest has met this test and therefore I agree that the marker should be removed.

NatWest submit that as this service has not upheld the disputed transactions part of this complaint, Miss W has made a fraudulent claim and so, it is justified in recording the marker against her. But an allegation of fraud is a serious allegation and one which needs to be supported by evidence which must be "clear, relevant and rigorous".

We know from the evidence provided to us that Miss W herself could not have carried out these transactions because she was at work for the most part – and I make a finding to that effect. But as I have already said - whilst she may not have made the transactions, NatWest is still entitled to treat them as being authorised as I think the evidence shows Miss W consented to someone else making them.

What I cannot make a finding on, however, is whether these transactions were carried out by someone who had Miss W's *actual* authority to carry them out or an *apparent* authority to do so. In the case of the latter, I think NatWest would be incorrect in assuming that Miss W has wilfully committed fraud.

NatWest will know that the 2017 PSR's (the relevant rules here) allow for transactions to be carried out by an agent on behalf of the consumer. Based on the evidence in this complaint, it is more likely than not, Miss W has shared her details with another. But NatWest simply does not have enough evidence to say whether these transactions were carried out under Miss W's actual or apparent authority. So, I think it has failed to meet the burden it must reach in placing a CIFAS marker.

I note also that NatWest has been in direct contact with CIFAS and it (NatWest) submits CIFAS has supported its action in the loading of the marker. Emphasis seems to have been placed as to *when* Miss W reported her card as lost or stolen – the timing being pivotal as to whether the marker has been correctly placed or not.

I do not agree with that argument – and place very little weight on when Miss W reported her card as lost. And I would remind NatWest that whilst I need to consider relevant rules, principles, laws and good industry practice, the decision on whether the CIFAS marker has been fairly and reasonably placed is a matter for me.

overdrawn balance and default marker

For very much the same reasons as the investigator, I uphold these aspects of the complaint. NatWest has a duty to treat those in financial difficulties fairly – and whilst I accept it did this when Miss W first made contact, I think it acted unfairly when it then recorded the default and passed the debt on to debt collectors – especially as it knew Miss W was in a dispute over the transactions and her liability for them.

In the circumstances, I would also encourage Miss W to contact NatWest and arrange an affordable repayment plan in order to clear this debt.

For both the CIFAS marker and default marker being recorded unfairly, I think £500 is a fair and reasonable sum which NatWest should pay in compensation. Of course, if NatWest chooses to set off the debt owed by Miss W against this figure of £500, then that would be matter for NatWest.

my final decision

My final decision is that I uphold this complaint in part.

National Westminster Bank Plc should:

- remove the CIFAS marker recorded against Miss W with immediate effect
- remove the default marker recorded on her credit file with immediate effect and update all credit reference agencies
- unwind the overdrawn balance debt back to £272.62
- invite Miss W to come to an arrangement with regards the repayment of this debt (if this is not to be deducted from the compensation figure)
- pay Miss W £500 for the distress and inconvenience caused (minus the £272.62 if NatWest chooses to secure payment via this means)

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 15 October 2020.

Shazia Ahmed
ombudsman