

## **complaint**

Mr S has complained National Westminster Bank Plc will not refund payments he didn't make and closed his account.

## **background**

Mr S opened an account with NatWest in May 2017 with an agreed overdraft facility of £1,250. He accepts he made some payments with his card. But he disputes a further 55 payments which resulted in an overdraft he says he never requested. NatWest decided these transactions were not fraudulent so they wouldn't refund them. They gave him immediate notice that they were closing his account as they believed Mr S had given them false information. NatWest sent his debt for collection by a third party. A default was applied to Mr S's credit record on 30 November 2017.

Mr S was unhappy with this conclusion as he didn't believe he'd authorised these transactions. His mother, Ms P, brought his complaint to the ombudsman service on his behalf.

Our investigator saw that the disputed payments involved cashpoint withdrawals, point of sale payments using the genuine card and PIN as well as online payments. Mr S had initially confirmed some payments including online payments to a gambling company were his. Further payments to this company were then disputed but Mr S's current account had received refunds from this company as well.

Our investigator did not see how someone else could have made all the disputed payments nor obtained Mr S's card and PIN. He also believed NatWest had done nothing wrong in taking a commercial decision to close Mr S's account. They could do this in line with their terms and conditions. The issue around Mr S's post code being quoted incorrectly wasn't as Mr S feared as NatWest were only quoting the last digits of the post code of Mr S's branch.

Ms P told us Mr S didn't agree with this outcome. She was adamant there had been identity fraud. He wanted his complaint reviewed by an ombudsman.

In the period whilst this complaint has waited for an ombudsman to be available to consider it, Mr S has suffered from severe mental health issues. We've had additional correspondence with NatWest and Ms P on Mr S's behalf. NatWest has confirmed they'd put on hold any attempt by debt collectors to ask Mr S to pay this debt. They wrote to Mr S in September 2019 to confirm this.

I completed a provisional decision on 18 February 2020. Considering all the circumstances of the complaint I felt it was fair and reasonable to instruct NatWest to write off Mr S's debt.

Ms P accepted this conclusion on behalf of her son. She disputed some of my understanding how different things may have occurred but they were now keen to get this issue behind them.

NatWest didn't respond.

I now have all I need to complete to complete my 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. Having done so, I've made the same decision as I did when writing my provisional decision. I'll explain why.

I understand that Mr S says there has been a history of identity fraud and has provided other documents about a loan he did not apply for. He was concerned to receive an email about a change to his account using a different postcode to his – although that turned out to be genuine and it included the postcode of his home branch. I'm not convinced that identity fraud is the explanation here. Mr S accepts he did open the bank account himself. He also accepts he made some initial transactions to the gambling company in question. He confirmed this to NatWest when they initially questioned him about these transactions. The key issue is Mr S believes someone was then able to make payments without his authority.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing else 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 both NatWest and Ms P, on Mr S's behalf, have told us.

The disputed payments took place between 17 May and 24 June 2017. Mr S notified NatWest on 27 June. Some of these required the genuine card and PIN to be used. Mr S never reported his card lost or stolen. The payments to the gambling company would have meant someone had logged onto Mr S's own gambling account to make online bets. To decide that these 55 disputed payments were not made with his authority I'd need to think all of the following are likely:

- An unknown third party was able to access his card (and discover Mr S's PIN) and was either able to take and replace it. Or alternatively they were willing to take the risk that Mr S would not realise his card was missing for an extended period.
- That person somehow also discovered the details to allow access to his gambling account. And then gambled online using Mr S's ID and requested money to be refunded to Mr S's account.
- Some of the disputed transactions are very unlike those we'd normally see in a case of fraud – so payments to a media subscription service for example.
- That person did not take as much money from the account as quickly as possible as a fraudster typically might.
- There's evidence of undisputed transactions between those that are in dispute.
- Unknown fraudsters – like those who undertake ID fraud – would not run the risk of replacing Mr S's card and PIN.
- Mr S didn't notice what was going on and didn't use his account during the period.

All of these coincidences seem unlikely to me. I know this will be hard to accept for Ms P who has argued cogently on her son's behalf. She's provided us with press cuttings explaining how fraud – similar to what may have happened to Mr S – could take place. However I don't think this is what happened here.

It seems odd that Mr S only disputed transactions that happened after 17 May. That was the date Mr S first confirmed to NatWest gambling transactions until then were genuine. I think Mr S found himself in a dire situation where he was gambling and unable to stop. He thought saying these hadn't been authorised offered him a way out. It's extremely unlikely that fraud only started to take place the day after Mr S confirmed transactions were genuine. On balance I don't believe these transactions were unauthorised. Therefore I'm not in a position to ask NatWest to refund any money to him.

NatWest didn't think Mr S's claim of fraud was genuine. So in line with its own terms and conditions, I don't think it would be fair to say they acted incorrectly in closing his account.

Ms P has also forwarded to us copies of correspondence from mobile service providers and payday loan companies asking both her and Mr S to repay debts and loans taken out with them. She believes this is evidence of ID fraud. I am separately considering a complaint Ms P has brought about transactions she has disputed. That will be the proper place to consider some of this correspondence.

I have to say, however, that taking into account what I know of her son and the situation he was in during 2017 and 2018, I don't think it is completely out of the question that in desperation he may have applied for payday loans. I am pleased to see that she's been able to sort most of these debts out on her son's behalf.

I am aware of what has happened since 2017. Mr S has not been well at all. He's not in employment. What has happened has had a great impact on his family's financial and mental health. I spoke to NatWest about this situation.

They confirmed they'd written off this debt in January 2018 and wouldn't be pursuing him for the £1,348.68 that was outstanding at the time. Mr S's credit record will still have a default marked on it. As I believe he made the disputed payments which caused the debt, I don't believe it would be fair to ask NatWest to remove this. Taking all issues into consideration, including Mr S's health, I believe this is a fair and reasonable conclusion to his complaint.

### **my final decision**

For the reasons given, my final decision is to instruct National Westminster Bank Plc to write off the debt in Mr S's name.

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

Sandra Quinn  
**ombudsman**