

complaint

Mr C complains that National Westminster Bank Plc ("the bank") caused him a financial loss, as well as embarrassment and upset.

background

Mr C had an account with a bookmakers, and in April 2013 he made a series of payments to it via his bank account, totalling £8,103. However, when the bookmakers didn't pay him his winnings, as he felt it ought to, he complained to the bank saying that the payments weren't authorised.

As part of the bank's procedure a pre-credit for the full disputed sum was paid into Mr C's account. Mr C was advised that in order for the bank to carry out a full investigation into the disputed transactions he would need to sign fraud disclaimer forms. There were problems with getting these forms to Mr C, and despite the bank sending them by post three times he didn't receive them. On the bank's suggestion he then visited his branch to collect them in person. He says that when doing so he met with the branch manager who advised him that as the disputed money was in his account it was his to keep, and the disclaimer forms wouldn't be necessary. On the back of this Mr C withdrew the pre-credited money, and closed his accounts. He then contacted the bookmakers he was in dispute with and closed his complaint and account, as he thought the matter was resolved.

It transpired that the money was a pre-credit only, and not a final resolution of his complaint about the unauthorised transactions. Mr C had been advised a number of times by the bank that the money was his only on a temporary basis until a full investigation had been carried out. As he had failed to submit the disclaimer forms, this investigation didn't take place and the bank sought to take the funds back from his account. As he had withdrawn the money from his personal account and closed it by this point, the bank looked to his joint account with his wife and took the money from there. In doing so it wrote to Mrs C to notify her of the debit. In doing so Mrs C became aware of her husband's debt, and his relationship with the bookmakers. She had no previous knowledge of this. Her reaction was that if Mr C could afford to gamble then he could afford to repay her £12,000 that she had gifted to him. The issue also caused a significant strain on their marriage.

Mr C complained to the bank that had the branch manager not mis-advised him that the pre-credited funds were definitely his to keep that he wouldn't have spent the money, and he wouldn't have closed his complaint with the bookmakers. Further, he wouldn't have closed his personal account and his wife wouldn't have found out about his gambling. He blamed the bank for his losses of £8,103 and £12,000, and sought reimbursement. He was also very upset about the bank's breach of confidentiality in writing to his wife and causing trouble in his marriage.

The bank accepted that it had made a mistake in writing to Mr C's wife, and not to both of them, about the joint account, and it gave him £500 compensation in this respect.

However, the bank didn't believe it had made any other mistakes, and said that there was no evidence to suggest that the branch manager told Mr C that the credit in his account was definitely, permanently, his to keep. It said that Mr C was told over the phone on more than one occasion that any credits received in his account were pre-credits only and could be taken back out again, if for example the signed disclaimer forms weren't returned. On this

basis the bank was confident that Mr C should have known that the pre-credit was not permanent and the matter of the disputed transactions was not resolved.

Mr C wasn't satisfied with the bank's response, and complained to this service. Our adjudicator considered all of the evidence and concluded that there wasn't any evidence, other than Mr C's own recollection, that the branch manager had told him that the pre-credit was his to keep and that the disclaimer forms weren't required. He also noted that Mr C had the benefit of this money, and had used some of it to pay his mortgage.

Insofar as the disputed payments to the bookmakers were concerned, he noted that the payments were genuine, as conceded by Mr E. The dispute was that the bookmaker didn't pay out on supposedly winning bets. As such, the dispute was with the bookmakers directly, and not with the bank and it hadn't made any error in allowing the payments, which were authorised, go to the bookmakers.

Our adjudicator felt that the £500 compensation paid by the bank was a fair and reasonable sum to reflect its error in writing to Mr C's wife, and the associated trouble it caused. He didn't think that the bank should be responsible for Mr C's wife demanding repayment from him of the £12,000 gift she'd made to him, as it wasn't foreseeable to the bank that this would be a consequence of writing to her.

On this basis our adjudicator didn't uphold the complaint. Mr C wasn't satisfied with this, and sought referral to an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having done so, I'm satisfied that our adjudicator reached the correct conclusion when he advised that he would be unable to uphold the complaint. I'd like to explain why:-

£8,103 pre-credit

The payments made to the bookmakers were not unauthorised. Mr C confirmed in a call with our adjudicator that he did make these bets. I'm therefore concerned that he reported the payments to the bank as disputed transactions when he knew that this wasn't the case.

The real issue of complaint around these payments was that the bookmaker didn't pay out on what Mr C believed to be winning bets. This is a distinct matter between Mr C and the bookmaker, not involving the bank, and I'm satisfied that the bank didn't make a mistake in allowing the payments.

In terms of the pre-credit, I've listened to the various phone-calls between Mr C and the bank, and I'm satisfied that the purpose of the disclaimer forms, and the fact that the pre-credit was only temporary, was made very clear by the bank. I do see that despite the bank issuing these forms to Mr C three times, he never received them, and I don't know the reason for this. However, as suggested by the bank in one of the calls, Mr C called in to branch to collect the forms in person. He says that when he asked for them he was told by the branch manager that he didn't need them and that the money was his. I'm afraid I'm not convinced that this was the case. I have only Mr C's word for this, as the branch manager is clear that he didn't say this. I have to take into account Mr C's reason for visiting the branch,

which was precisely to collect the forms, so that the investigation could take place, with the ultimate goal being to secure the pre-credited funds. I'm satisfied that Mr C had been made well aware of the importance of these forms, and the temporary nature of the pre-credit in his account.

I also have to take into account what Mr C's next action was, which was to withdraw the money and close his account. This seems to be the action of somebody who is nervous and worried about the money being taken back from him, not of somebody who is confident, having been given an assurance by the bank that the money was his to keep, that the money was safe.

Mr C then closed his complaint and account with the bookmakers, and he says that in doing so he lost his right to reclaim the disputed money from it. I don't agree that this is correct. His decision to close the complaint and account was his alone, and it wouldn't be reasonable to say that the bank is responsible for this. In any event, if Mr C does have a genuine dispute with the bookmakers, I don't see that he has to have an account with it in order to proceed with a complaint, or another type of dispute resolution process, with it. I don't know what he said when he closed his complaint, and how official his complaint was, but in any event I remain of the view that none of this had anything to do with the bank.

I should also add that due to the fact that Mr C himself confirmed that he did make the payments, even had he signed and returned the disclaimer forms, the investigation wouldn't have concluded in his favour and he wouldn't have received a refund. He would therefore still be in the position in which he now finds himself, where he may or may not have a direct claim against the bookmakers.

Due to all of these factors, I don't think the bank is responsible for the £8,103 pre-credit and I can't ask that it repay this to Mr C.

£12,000 gift to be repaid to Mrs C.

I don't know what the details of this gift were. The money may have been an outright gift, or a repayable loan. In any event, the money was spent by Mr C and if his wife now requires repayment of it then that's a private matter between them both. I can't ask the bank to make a payment in this respect.

breach of confidentiality

It's not in dispute that the bank was very wrong in writing to Mrs C only in relation to the joint account, and that in so doing a private element of Mr C's life was revealed. I also don't doubt how much trouble this caused for Mr C. However, the bank wasn't a party to the private financial arrangements between Mr and Mrs C. It made a genuine mistake in sending this letter, not knowing what the consequences might be. It has accepted and apologised for its mistake, and had paid £500, which I think is sufficient for an error of this type.

In summary, on the basis of all of the evidence I'm afraid that I'm not able to uphold the complaint. Beyond the breach of confidentiality point, I can't say that the bank did anything wrong.

my final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 2 March 2015.

Ashley L B More
ombudsman