

complaint

Mr J complains that National Westminster Bank Plc closed his account, recorded a CIFAS fraud marker against him, allowed a fraudster to open an account in his name, and failed to address his complaint about a cheque which was fraudulently paid into his account.

background

the old complaint

In May 2015, Mr J had a credit card account with NatWest. In that month some large credit card payments were made or attempted, which Mr J denied were made by him. He said they'd been made by a fraudster, but NatWest held him liable for them. At around the same time, two fraudulent debit card payments were made into his account to pay off the balance, which were then charged back by the cardholders' banks and re-debited from Mr J's account. As a result of this, NatWest eventually closed his accounts and recorded a CIFAS fraud marker against him.

Mr J complained about all of this to our Service in January 2016, but that complaint was not upheld. Our adjudicator thought that Mr J had authorised the disputed credit card payments, and that NatWest had not done anything wrong by holding him liable for them, reversing the debit card payments, and recording the CIFAS marker. He told Mr J in April 2016 that he could appeal to an ombudsman against this decision, but Mr J did not reply until January 2018. He asked for an ombudsman to review that complaint, but the adjudicator refused to re-open the complaint because it had been closed for so long.

the new complaint

In June 2015, a counterfeit cheque for £18,000 was paid into Mr J's current account. This was promptly identified by a member of the branch staff before it was sent to clearing. Mr J says this was nothing to do with him (and NatWest does not suggest otherwise). At the time, NatWest blocked his debit card and told him it was closing his account, but then after further investigation NatWest decided not to do that after all, and in July it paid him £200 compensation. Mr J's account remained open until it was finally closed later in 2015, along with his credit card account, as described above.

Mr J complained to NatWest about this issue in January 2017. He said that as NatWest had identified the cheque as suspicious, then it should also have detected suspicious activity on his credit card account – namely, the disputed usage in May 2015. NatWest replied in March, but its letter did not address Mr J's complaint about the cheque. So in March 2017 Mr J brought his complaint to our Service, and it was considered by a different adjudicator. That adjudicator asked NatWest to look into the complaint about the cheque, and as a result NatWest apologised to Mr J and paid him £50 for not having dealt with it earlier. But it did not uphold his complaint about anything else. It said the CIFAS marker had been registered because of the credit card purchases, not because of the cheque, and our Service had already rejected his complaint about the credit card in 2016. And it said it had dealt with the cheque properly.

At the same time as he brought this complaint to our Service, Mr J also complained that he had been a victim of identity theft in December 2016. He said someone had tried to open a NatWest account in his name, and when he reported this to NatWest the bank had wrongly told him that it had received no such application.

Mr J also asked us to re-open his original complaint about his credit card account so that everything can be considered together. He said he had received a letter from NatWest in April 2017 containing crucial new information, to the effect that NatWest now agreed that he had been treated unfairly. So he asked for the CIFAS marker to be removed, since it has resulted in other banks also closing his accounts, and made it difficult to apply for a job.

Our adjudicator did not uphold this complaint. He thought that £250 was fair compensation for the issues relating to the cheque. He refused to re-open the old complaint, or to consider the issues that had already been decided in that complaint. And he didn't think that Mr J had complained to NatWest yet about how it had dealt with the attempt to open a new account, so he didn't consider it.

Mr J asked for an ombudsman's decision. He said he hadn't been given a deadline for appealing against the original adjudicator's decision. And he said that NatWest had originally told him that the cheque had been paid in over the counter, but it had said more recently that it had in fact been paid into a machine, and that his debit card had been presented at the time. So he said that NatWest had misled him and misled the adjudicator. Also, the misuse of his debit card by a fraudster must be relevant to his complaint about the misuse of his credit card by a fraudster. He again asked for the old complaint to be re-opened.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I do not uphold it. I will explain why.

Before I do that, I should make it clear that I am only considering the new complaint. I am not going to reconsider the issues which were decided in the old complaint in 2016, because it's been closed for far too long. It's not reasonable to wait for so long to ask for an ombudsman's decision, deadline or no deadline. And the April 2017 letter Mr J referred to in support of his request to reopen that complaint does not in fact say what he thinks it says. All it says is that a member or members of staff had failed to speak to him courteously, and apologised to him for that. It does *not* say that NatWest had changed its mind about the credit card payments – quite the contrary. It specifically says that since the closure of his account and the CIFAS marker had already been considered by the Financial Ombudsman Service and his complaint had not been upheld, NatWest "will not be looking into this any further."

Assuming that NatWest did tell Mr J that the cheque was paid over the counter, I think we would have found out how it was really paid if he had pursued this issue in 2016 instead of leaving it until 2018. His argument about the use of the debit card would then have been taken into account at the time. That isn't a reason to re-open the old complaint now.

For the same reasons, I am not going to make findings of fact in the new complaint which are inconsistent with the findings made by my colleague in the old complaint. The original adjudicator wrote:

"Because I believe authority was given or made by [Mr J], I think NatWest is reasonable to hold [Mr J] liable for the transaction and the subsequent charges."

He went on to say that there was no reason why NatWest should remove the CIFAS marker it had registered about Mr J. I will not evaluate or contradict those findings.

Turning to the new complaint, I accept that the CIFAS marker was registered because of the credit card payments, and not because of the cheque. The reason I accept that is because – long before it registered the CIFAS marker – NatWest decided not to close Mr J's account as a result of the cheque. It unblocked his card, and paid him £200 as compensation for its initial decision to hold him responsible for the cheque. There is no evidence that NatWest has changed its stance on this issue since. So I do not think it would be fair or reasonable to require NatWest to remove the CIFAS marker, as it has nothing to do with the cheque. I think the same thing about NatWest's final decision, some months later, to close Mr J's accounts. This was because of the use of his credit card.

I think that £200 is fair compensation for the initial decision, soon reversed, to close Mr J's current account and block his debit card. And I think £50 is fair compensation for NatWest not having directly addressed that element of his complaint when he first raised it – especially considering that he had really only raised it in the context of renewing his complaint about his credit card account.

I do have power to consider Mr J's complaint about someone else having fraudulently tried to open an account in his name. When Mr J contacted NatWest about this, I think he was expressing his dissatisfaction with what had happened, whether or not he called it a complaint. It's been more than eight weeks since then, so it doesn't matter if he hasn't had a final response letter about it, telling him he has the right to escalate his complaint to our Service. But I do not uphold that complaint. I've seen no evidence to suggest that this was NatWest's fault.

Mr J's complaint about how NatWest dealt with this issue when he reported it is a different matter. He says that NatWest wrongly told him that it had not received any such application, and wrongly told him that its fraud department would be closed on a bank holiday when actually it was open. He says this delayed the resolution of this issue. But I don't think I can consider that complaint, because he still hasn't complained to NatWest about this yet. So I agree with our adjudicator that this matter falls outside my jurisdiction.

my final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 23 March 2018. But if we don't hear from him, then we will assume that he has rejected it.

Richard Wood
ombudsman