

The complaint

Mr C complains that National Westminster Bank Plc ('NatWest') opened an account and provided lending to a company which I'll call 'T' without his consent. He says that he was the victim of identity theft by a former employer.

What happened

Mr C told us:

- NatWest didn't check who the person with significant control of T was before opening the company's business current account.
- NatWest didn't conduct sufficient 'Know Your Customer' ('KYC') checks and didn't know who T's actual company director was. Had it done so, the bank would've seen that his signature had been forged.
- When he found documents for T in his name, he contacted NatWest about the fraud, and it confirmed it hadn't actually spoken to Mr C, only his employer 'Mr T' and his head of finance Ms W. It also agreed that all contact had been via email and that T's account application had been submitted by, and could only be amended by Ms W.
- He'd made a complaint to NatWest, but it hadn't taken this seriously and hadn't responded for over 22 weeks.
- NatWest was aware he'd been undertaking court proceedings against Mr T and had deliberately withheld important documents which meant he'd incurred a financial loss from higher legal costs.

NatWest told us:

- It couldn't provide statements to Mr C when he initially requested them as it wasn't sure it had the right identification. It asked Mr C to take identification to his local branch, and once he'd done so, the statements were ordered. It had taken reasonable steps to ensure T's information was only provided to the right person.
- It was aware of Mr C's court proceedings against Mr T and had provided all the information that it could. It wasn't able to provide an unredacted copy of the original account application, as this contained personal information not related to T.
- It had tried to look for the identification documents used to open T's account, however due to an error, these documents weren't saved on its system – only the email chain which had sent them over. It had apologised to Mr C for this, as these should have been available.
- It had provided Mr C with a list of T's outstanding liabilities to the bank in September 2022. This was only a business current account which operated in credit, there were

no other facilities which it had provided.

- It didn't think our service could consider this complaint as T was part of a wider group of companies.

Our investigator didn't think this was a complaint our service could consider. She said that Mr C was disputing that he'd opened T's account with NatWest, or applied for the borrowing and therefore, he didn't have the relevant relationship with the bank to be an eligible complainant under the DISP rules.

Mr C didn't agree. He said that he was T's sole director and shareholder and provided evidence from Companies House and the findings of the judge in the court proceedings. He said his complaint wasn't that he wasn't the director, it was that an account had been opened by Mr T and Ms W without his knowledge as the director. So, he asked for an ombudsman to review his complaint.

I issued a provisional decision on 2 April 2024. I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. There seems to be some confusion here about what T's complaint is. So firstly, I need to decide exactly what the complaints are, and what I can or should consider.

Mr C told us that he doesn't dispute that he is T's sole director and shareholder, and therefore, is eligible to bring the company's complaint to our service. However, he says that he didn't sign the application form to open T's account with NatWest, and therefore the bank has behaved unreasonably. I agree with Mr C here, I'm satisfied that he is T's director and that the company has a relationship with NatWest.

NatWest said that it didn't think our service could consider T's complaint as it was part of a wider company group structure, and therefore too big for the purpose of the DISP rules. However, I've seen a copy of the court document which says that T doesn't have the relationship with a parent company which NatWest initially claimed. And based on the evidence from Mr C, I think T does meet the definition of an eligible complainant for the purpose of the DISP rules. However, I don't think I can consider all of the complaints that Mr C has raised on the company's behalf, so I'll address them in more detail below.

The account opening

Mr C says that NatWest didn't complete its KYC checks compliantly as it didn't verify the 'person of significant control' opening I's account. Mr C is also unhappy that NatWest hasn't been able to provide a copy of the identification documents which were used to open T's account. Firstly, I need to make clear that my role isn't to fine or punish a business for making a mistake. So, whilst I recognise Mr C's frustration that the identification documents he wanted weren't available due to a system error, I can't simply award compensation because the bank cannot provide the copies he requires.

I don't think it's now disputed by either party that Mr C didn't open T's account with the bank initially. However, I'm satisfied that NatWest didn't know that the account information it had been provided by someone who wasn't Mr C. Despite Mr C's concerns about NatWest's impartiality, I'm not persuaded that the bank would intentionally open an account without the relevant authority. I've seen a copy of the application form which was used to open T's account, and it doesn't appear that

there is anything out of the ordinary here. So, I can understand why NatWest believed it had opened T's account correctly, as it had no reason to doubt this was the case until Mr C contacted it in September 2021.

I understand that Mr C wants more of an explanation from NatWest about how someone else was able to open an account in T's name, and a copy of the bank's procedures. However, I can see that NatWest has explained the process and provided the documents which allowed the account to be opened as much as it can. The bank has explained why it won't provide the remaining documents that Mr C has requested, in that they are either personal information for other individuals or commercially sensitive, and I think this is reasonable.

Mr C says that NatWest didn't take his complaint seriously and took too long to respond to his complaint. I'm sorry to disappoint Mr C, but complaint handling isn't an activity that our service covers so I can't make a finding on whether or not NatWest deal with T's complaint in a reasonable manner.

I acknowledge that Mr C was frustrated because T's Relationship Manager ('RM') wouldn't immediately provide the information he requested - but I don't think NatWest behaved unreasonably here. Mr C had contacted the bank via email, with no prior relationship or proof that he was indeed, Mr C – T's actual director. I think NatWest acted appropriately in asking Mr C to take his identification into the branch so the staff there could verify his identity. I've seen that once this had taken place, the RM raised the complaint, and either arranged for, or gave Mr C any information that he could personally provide.

Mr C says that fraud has taken place here in the opening of T's account, and that T was also used to obtain other lending illegally. However, I can't see that there has been any significant impact to T. I say that because NatWest has confirmed that T doesn't have any outstanding borrowing, and the only account held by the bank is a business current account which operates in credit. It appears that the other borrowing taken out in T's name was repaid early without any missed repayments, so apart from the borrowing itself appearing on any credit searches, there doesn't appear to have been any impact to T here.

I acknowledge Mr C's concern and frustration here, but my role is to put T back in the position it would've been had an error not taken place. Here, the issue is that NatWest opened an account for T which Mr C says he didn't give authority for. It has also acknowledged Mr C as T's sole director - this means that Mr C can close T's account as he's already said he doesn't want anything to do with the account. So based on what I've seen, I'm satisfied that NatWest has done enough to put things right for this part of T's complaint.

Delays in providing documents

Mr C says that NatWest has behaved unreasonably as it has redacted some of the account opening information that he requires to recover his losses. He also says that NatWest's delays and refusal to provide information has caused him a financial loss, through more legal fees. I think it's important for me to note that I recognise Mr C's strength of feeling about this matter. He's provided detailed submissions to support the complaint, which I've read and considered carefully. I'm sorry to disappoint Mr C, but despite his representations, I haven't seen anything to suggest that the lack of documents has caused T, as the complainant company, to suffer a loss. This means that I can't make an award to the company regardless of whether or not the bank did something wrong when opening the account.

I understand why Mr C wants the remainder of the account opening information, and I also recognise the impact that he says he's personally suffered. However, Mr C isn't the eligible complainant here, it is T's account at the centre of this dispute, and therefore T has the relevant relationship with the bank. So, I could only consider any impact to T – not Mr C personally. Whilst I have some sympathy for Mr C here, he is not the eligible complainant, and I cannot make an award for any losses suffered by anyone that isn't an eligible complainant under our rules.

I'm sorry to disappoint Mr C as I know he feels strongly about this complaint, but I am unable to make any award for this complaint. As I have mentioned above, I also can't tell NatWest to provide the documents Mr C has requested, if the bank believes it is unable to do so due to its legal and regulatory obligations. However, a court has disclosure rules and powers that I do not, and therefore it may be able to request this from NatWest if required.

I invited Mr C and NatWest to give me any more evidence and information they wanted me to consider before issuing my final decision. NatWest accepted the provisional decision and had nothing further to add. Mr C didn't accept the provisional decision. He said in summary that:

- Our service could make awards for financial and consequential loss and T had been caused this as a result of a current account being opened without his knowledge.
- NatWest allowed a BBL application to be fraudulently applied for without his knowledge and this could have had serious consequences for him if it hadn't been repaid, therefore he should be reimbursed for all interest and charges paid by T.
- As T's director, he had incurred £12,000 of legal fees to date to obtain the documents from NatWest as T didn't have any funds to do so. He was also bringing a private prosecution against Mr T and the others involved, which was likely to amount to a further £10,000 in legal costs.
- NatWest allowed Mr T and Ms W to withdraw funds of around £43,000 from T's account and have access to online banking facilities despite being aware of the fraud allegation. This caused the company to become insolvent, and the bank also hasn't allowed him the same facility.

What I've decided – and why

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 I did in my provisional decision.

I've considered Mr C's further comments as to why he believes that T has been caused a financial loss. However, our service cannot consider a speculative loss on the basis of something that may have happened, but did not in fact take place. In this case, the funds that T borrowed were repaid in full.

I recognise that Mr C says as T's director he had to pay the legal costs to obtain the documents from NatWest. However, as I explained in my provisional decision, I'm not persuaded that those legal costs relate to losses caused to T as the eligible complainant here, from the evidence Mr C provided, these appear to be relating to a case he personally

raised against Mr T. I acknowledge that Mr C also says he intends to pursue Mr T and Ms W personally to recover T's funds which they used without his authority. However, that doesn't have any influence on this complaint against NatWest. As I have said in the previous decision, I'm satisfied that NatWest believed the account it opened for T was undertaken with the correct authority, and that the account was also being used by person(s) who had the consent to do so from Mr C.

It's not in dispute that T's account wasn't opened by Mr C, or that other person(s) were undertaking transactions through the account. However, I remain of the opinion that NatWest believed it had opened the account correctly, and undertook reasonable checks when Mr C contacted the bank with the fraud allegation. I'm also satisfied that the limited company T did not suffer any financial loss as a result of the opening of the bank account. So my final decision remains that same as that of my provisional decision.

My final decision

My final decision is that I don't uphold the parts of T's complaint that I can consider, as T hasn't suffered any loss. And I cannot consider the losses Mr C has incurred personally as T's director, as he isn't the eligible complainant.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 17 May 2024.

Jenny Lomax
Ombudsman