

## **The complaint**

Mr D complains that National Westminster Bank Plc won't refund payments made from his account to an online gambling firm. He says he didn't make the payments.

## **What happened**

The background to this complaint is well-known to both parties, so I'll only provide a brief summary here.

In May 2019, two gambling transactions were made – totalling £205 – using Mr D's NatWest debit card. Mr D complained he'd not made these transactions and wanted them refunded. Mr D said the card had been taken from his post box and used to register the gambling account.

The two payments made to the gambling firm were as follows:

8/5/2019 @ 18:58	£5
9/5/2019 @ 18:16	£200

Mr D has said he found out about these transactions when he logged on to check his online banking. He also said he'd never used the gambling firm the payments went to.

Mr D contacted NatWest to inform it that he hadn't made any of the payments and to seek a refund. NatWest looked into what Mr D had told it had happened but declined his claim. It noted the correct card details had been used and that the gambling firm had confirmed to it, that its records matched those held by NatWest. NatWest added the IP address used for the gambling transactions, was the same as one used by Mr D regularly. NatWest issued its final response on 18 May 2019, not upholding Mr D's complaint.

Mr D then brought his complaint to our service and one of our investigators looked into things. Our investigator didn't uphold Mr D's complaint, in summary she explained the card that had been used had been issued in November 2017 and was collected in branch, which would have required photo ID. So she thought it unlikely a third party could have had possession of the card without Mr D's knowledge. And as she could see the IP address for the gambling transactions was one Mr D had used, she thought it more likely than not Mr D had made the payments to the gambling firm.

Mr D didn't accept our investigator's view and so the complaint has been passed to me for a decision.

## **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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but

because I don't think I need to comment on it in order to reach the right outcome. I hope Mr D won't take it as a discourtesy that I've condensed things into what I see is the crux of his complaint.

Having considered everything, I've reached the same overall conclusions as the investigator did, and for similar reasons. I appreciate this will come as a disappointment to Mr D but please let me explain why.

The regulation that is relevant when considering Mr D's complaint in relation to the disputed transactions is the Payment Services Regulations 2017 ("PSRs2017"). Under the PSRs2017 banks are required to refund the amount of an unauthorised transaction - where its customer didn't make or authorise payment(s) themselves.

There are some exceptions in the regulations, but none I've needed to consider or that have had an 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 payment(s) themselves or allowed them to be made. If we're satisfied that they did, then we generally wouldn't ask the bank to refund them.

So, I need to come to a view about whether or not I think Mr D authorised the payment. Looking at all the facts of this case, I can't know for certain exactly what's happened. I wasn't present at the time when the disputed transactions took place or when the preceding and ensuing events occurred.

So, in situations like these I need to decide a case on what I think is more likely than not to have happened. To help me decide this I've considered what Mr D has told us and the information he has provided about the events leading up to the disputed transactions. I have also taken into consideration what NatWest has said and all the other evidence surrounding the transactions before reaching my decision.

From the evidence I have seen I am satisfied that the payments were authenticated, and I think on balance its more likely Mr D made them himself. I say this for the following reasons;

- The card used for the gambling transactions had been issued to Mr D in November 2017 and had previously been used successfully by Mr D for legitimate transactions. So it seems unlikely to me that this was the same card Mr D believes was stolen from his post box.
- This is supported by evidence that NatWest has provided, indicating that the card used for the disputed transactions was collected in branch and it would have required photographic ID for it to have been collected.
- Considering the card used was issued in November 2017, I'm not persuaded a fraudster would have kept hold of the card for some 18 months before using it. Typically, a fraudster will try and make the most of having access to the card details in the shortest amount of time to maximise their gain before the fraud is identified and the card blocked. So, on balance I'm not persuaded that the activity matches what I'd typically expect to see of fraudulent use.
- The gambling firm has confirmed its records matched those held by NatWest.
- One minute before each of the disputed transactions were carried out Mr D's mobile banking was logged into. The same IP address was used to carry out the gambling transactions that were used to log in to Mr D's mobile banking and this was an IP

address that Mr D used previously. This would mean, if the transactions had been carried out by a fraudster, the fraudster would have needed Mr D's mobile banking details and to have been in the same location as Mr D. I'm not persuaded this is likely to have been the case, as there is no suggestion of Mr D's mobile banking details being compromised and I don't think it likely a fraudster would steal a card from a branch, and then when trying to use the card some 18 months later, happen to be in the same location of an IP address that Mr D regularly uses.

- I also cannot see the benefit to an unknown third party of spending Mr D's funds by registering a gambling account in his name, using his card – as any winnings would be payable to Mr D, not the third-party.

There's no doubt that fraud does happen and people's debit cards are used without authorisation even for gambling transactions. However the evidence doesn't suggest that's what happened here. I believe it's more likely than not Mr D made these transactions himself.

### **My final decision**

My final decision is that I don't uphold this complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 April 2021.

Stephen Wise  
**Ombudsman**