

The complaint

Mr F has complained Nationwide Building Society won't refund transactions he didn't authorise.

What happened

In December 2019 Mr F complained to Nationwide his card details had been used for gambling transactions which he'd not made. Nationwide contacted the gambling company involved (who I'll call B). They showed they'd got a copy of Mr F's passport to open the account. Nationwide also note Mr F had a history of gambling with his card on this Nationwide account. They wouldn't agree to refund him.

Mr F brought his complaint to the ombudsman service.

Our investigator reviewed the evidence. This included copies of online chats Mr F provided which he believed showed he'd not made these transactions. He also told us the electricity bill used to verify one of the accounts was fake.

Our investigator noted Mr F didn't refer his concerns to Nationwide until more than 10 days after the fraud took place. Since a considerable amount of money had been taken from Mr F's account and evidence showed Mr F had been checking his account status during this period, he found this surprising. He also noted subsequent gambling attempts a few days later were for the exact amount Mr F had in his account.

Overall he believed it was more than likely Mr F had made these transactions himself. He wasn't going to ask Nationwide to do anything further.

Mr F was unhappy with this outcome. He asked an ombudsman to consider his complaint.

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 our investigator and for roughly similar reasons. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The Payment Services Regulations (PSRs) are the relevant law here. These primarily require banks to refund customers if they didn't make or authorise payments themselves.

Certain other circumstances do apply but nothing that's 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 transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

I'm not going to cover all the points raised in the view in detail. The view of 1 September 2020 explains the regulations which guide how we review these cases, as well as covering all the transactions involved in this complaint. Our investigator's subsequent emails with Mr F also touch on other aspects and questions Mr F raised after seeing the initial view.

No discourtesy is intended by me not covering all issues. Instead, I've focussed on what I think are the key matters here and which impact the decision I'm making. This simply reflects the informal nature of our service as a free alternative to the courts.

I've covered the following issues in coming to my decision:

- Mr F acknowledges he used his Nationwide account for regular gambling. I've seen statements from 2019 and these clearly reflect this.
- Mr F has told us the email address used to open some of the disputed gambling accounts isn't his. It's certainly true that's the case in terms of the email address Mr F has given to us. But it's not unusual to see people using a number of different email addresses for different-related reasons. I also note the other email address uses common features comparable to the address Mr F has given us.
- Mr F believes his passport details may have been compromised from one gambling website to enable them to be used with B. I'm not sure I find this realistic although I haven't ruled out a collusive member of staff.
- Mr F has also given us evidence from a utility company to demonstrate he doesn't hold an account with them. He argues the bill used to set up the gambling account is therefore false. I note what Mr F has sent us about this. However I find it surprising that the electricity company would provide him with full name and address details for the customer who supposedly held this account. This surely would go against their data protection requirements.
- Mr F didn't raise any concerns with Nationwide until 5 December after more than £10,000 worth of transactions debited his account 10 days or so earlier. However I can see from Nationwide's records that Mr F was accessing his accounts almost daily around this period. I have to wonder why he didn't raise his concerns immediately particularly considering how much money was at stake. Mr F has told us he wouldn't have noticed the detail of the transactions but he'd certainly have noticed the decline in his account balance.
- Mr F also set up a new savings account with Nationwide on 28 November 2019 which he arranged to fund. He also held another savings account with Nationwide which he'd had for a number of years. A transfer of more than £3,300 was made on 20 November 2019 from this account to his current account. This money allowed some of the disputed gambling transactions take place.
- Mr F has told us one of the gambling companies involved (who I'll call S) acknowledged there'd been fraud involved and refunded £1,400. In fact in correspondence with our investigator, S confirmed the deposits had been withdrawn and re-credited to their source before Mr F had contacted them. They'd not made any judgement on whether fraud had been committed or not.
- Subsequent attempts to spend money in Mr F's current account were made on 1 December 2019. These weren't authorised by Nationwide. I note all these attempts were made only to spend the money available in the account. I see no reason why

anyone other than Mr F would have been aware of this. As stated earlier, there's been no indication that there was other compromise of Mr F's accounts.

- There's no dispute that gambling companies only credit the card accounts that gambling transactions were made with in the first place. This limits the chance of someone using another person's card details for gambling transactions unless they were able to access the account involved. Mr F hasn't suggested any other type of compromise has occurred.

The test under the PSRs isn't whether there was an opportunity for the card and PIN to be compromised; rather whether the payment services user (Mr F in this case) authorised these transactions. It's not my role to decide how someone else could have got hold of Mr F's card details, made these transactions or to investigate who that potential fraudster may be.

However I do need to believe there are scenarios which explain how someone could have accessed and manufactured Mr F's details without his consent. This is difficult when I note any gambling winnings would always have credited Mr F's account. Coupled with the information that whoever used Mr F's card knew his balance to specifically attempt gambling transactions on 1 December that matched the available funds, this suggests to me it's more likely Mr F authorised this use.

I appreciate Mr F is not going to agree with this outcome but overall I think this lays out the most likely scenario.

Taking all the evidence into consideration, I believe Mr F authorised these transactions. I won't be asking Nationwide to do anything further.

My final decision

For the reasons I've given, my final decision is not to uphold Mr F's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 March 2021.

Sandra Quinn
Ombudsman