DRN-2568861

The complaint

Mr L has complained that Nationwide Building Society won't refund transactions, which he said he didn't make.

What happened

Mr L is disputing multiple online payments, totalling £1,520, from his current account to two online gambling merchants. The payments were made on 16 February 2019 at 2.11am and between 12pm and 3pm. One of the accounts was opened the same day. There were 18 payments in total and they varied in amounts between £20 and £500. Three transactions were declined due to insufficient funds in Mr L's account at the time. These were for amounts of £500, £100 and £20.

Mr L raised a fraud complaint with Nationwide the same day at 7.42 pm. He said he'd gone fishing that day and was out all day. He said he had his debit card with him and used it while fishing. On the 15 February 2019, he'd gone to bed early because he needed to get up early to go fishing the next day. His card was with him at home.

He asked Nationwide for a refund.

Nationwide investigated his complaint and decided not to refund the disputed payments. It said there was no evidence of fraudulent activity. It thought Mr L had made the payments himself because:

- his debit card details were used to set up the account with the gambling merchants.
- One of the gambling merchants provided personal details for the account e.g. name, address, date of birth. The personal details matched the details it held on file for Mr L.
- The transactions were consistent with other gambling activity on his account. The disputed payments were made from an IP address, which he had used to log in to his mobile banking on numerous occasions.
- He was logging in to his mobile banking throughout 16 February 2019 and he would have seen the disputed transactions. However, he didn't report them until later that evening.

As Mr L didn't agree with Nationwide's decision, he asked this service to investigate. He told this service that he believes his ex-girlfriend made the payments, as part of a long-standing campaign of harassment against him, which has involved the police. He said he doesn't have Wi-Fi at home. He said he usually logs in to his mobile banking via the app on his phone, but occasionally he uses the browser on his phone to access his mobile banking. He said his mobile network provider is Giffgaff.

An investigator looked into his complaint and recommended that it be upheld. She concluded that it was more likely that someone he knew made the transactions without his consent because:

- the physical card wasn't needed to make the payments, only the card details.
- The personal details used to open the account with one of the merchants were easy to get. Anyone who knew him could've opened the account with that information.
- The mobile phone number and email address on the account were different to the details held by Nationwide.
- The IP address used for the disputed payments was different to the IP address used to login to his mobile banking. Our investigator said that as they covered different regions, he couldn't be in two places at the same time.
- There are no payments indicating he has Wi-Fi. But there are payments to Giffgaff
- He hadn't used these gambling merchants before. He was a regular user of different merchants.
- When he logged in, he saw the pending transactions but thought they were transactions he'd made the previous day.

Mr L had also disputed a payment to Microsoft for an Xbox game. This transaction was made on 16 February 2019 at 2.06 am. However, he said his card details may have been stored on the Xbox. As he said this game was bought for his son's benefit, the investigator decided not to ask Nationwide to refund it.

Nationwide didn't accept the investigator's view. It said it could link him to the IP address which was used to make the disputed payments. The IP address covered a region where his ex-girlfriend lives with their children. Nationwide said he'd logged in to his mobile banking from that address on other dates and notably on 2 March 2019, when he used the same IP address over a period of around 9 hours.

It said the IP addresses he normally used for mobile banking looked as though it was his phone's network. Nationwide believes the logins were carried out using his mobile data. This means he could have been in his ex-girlfriend's house when he logged in on 16 February 2019.

Also, it said he last used his card at a fishing venue and tackle shop on 16 February 2019 at 8.07am. The location was approximately two hours' drive from his ex-girlfriend's home town. The value of the transaction suggested he bought equipment but not a day ticket for fishing. It asked him to provide proof that he'd purchased a ticket for fishing, but he couldn't provide any ticket.

Nationwide commented that it's not uncommon for people to have different email addresses and, according to its records, he did change his mobile phone number frequently.

Nationwide also said that the pattern of activity was consistent with previous gambling activity. For example, on 13 February 2019 he completed transactions totalling £850 in just under an hour. And he hadn't used other gambling merchants for long periods. His relationship with one business was only 2-3 months long before the disputed transactions occurred and there were other merchants which he used for very short periods of time (a day each).

Nationwide has asked for an ombudsman's final decision.

I issued my provisional decision on 9 December 2020. I decided that, on balance, it was more likely that Mr L had made the payments and that it was fair and reasonable for Nationwide to refuse to refund him.

Mr L didn't accept my decision. He maintains that his ex-girlfriend made the disputed payments and he said he never had an iPhone 8.

Nationwide responded by send us the mobile banking audit report again, but this time with the iPhone 8 highlighted in the report.

This case has now come back to me for an ombudsman's final 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.

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.

I'm very sorry to disappoint Mr L but I'm afraid I haven't changed my decision.

I've already explained to Mr L that there are laws which say that Nationwide is required under to refund the amount of an unauthorised transaction. This law is the Payment Services Regulations 2017 (the PSRs 2017). But the regulations also say that Nationwide can hold Mr L liable for any disputed transactions, if the evidence suggests that it's more likely than not that he made or authorised them himself.

I'm satisfied from Nationwide's reports that the disputed payments were authenticated with Mr L's card details – the long card number, the expiry date and the three-digit CVV number. But the regulations say that is not, on its own, enough to enable Nationwide to hold him liable. So, I also need to think about whether the evidence suggests that it's more likely than not that Mr L made the payments.

And from what I've seen, I don't think it's unreasonable for Nationwide to conclude that Mr L authorised the transactions. This is because

- his debit card details were registered to the account with one of the gambling merchants. We know from experience in other cases that this usually means that any winnings would be paid into his bank account. And I can that other merchants had paid winnings into his account. So, I can't see any reason why his ex-girlfriend would use his card details for bets, if she wasn't going to benefit from any winnings.
- One of the merchants provided the IP address from which the disputed payments were made. The same IP address was found in Nationwide's audit report for his mobile banking. This evidence shows that Mr L had used the same IP address to log in to his mobile banking on numerous other occasions, for example on 23 February 2019 and 2 March 2019. The IP address covers the region where his ex-girlfriend lives.
- His own evidence was that he uses his mobile data and not a Wi-Fi network. He also said he used the Wi-Fi when at his ex-girlfriend's home. So, it was possible he was at his ex-girlfriend's home on 16 February 2019 and simultaneously logging in to his online banking via his mobile data.
- The disputed activity is consistent with all other gambling activity on his account, both before and after the disputed transactions. For example:
    - 9 Feb 2019 - £40 spend
    - 9 Feb 2019 - £450 credit
    - 10 Feb 2019 - £430 spend
    - 10 Feb 2019 - £200 spend
    - 11 Feb 2019 - £660 credit
    - 11 Feb 2019 – £575 credit

    - 11 Feb 2019 - £590 spend
    - 12 Feb 2019 - £1,150 credit
    - 13 Feb 2019 - £850 spend
    - 14 Feb 2019 - £100 spend
    - 15 Feb 2019 - £850 spend
    - 15 Feb 2019 - £1,650 credit
- He had a habit of using several other gambling merchants for short periods of time, so the disputed payments were not out of character for the account.
- There was sufficient time to get from the fishing tackle shop to his ex-girlfriend's home town.
- Mr L told this service the disputed transactions were made with an iPhone8 and that he doesn't own an iPhone 8. However, Nationwide's audit for his mobile banking shows that from 9 February 2019 to 11 March 2019 he logged in frequently from an iPhone 8. And he logged in on 16 February 2019 with an iPhone 8.
- The logins on 16 February 2019 occurred around the same time as the disputed payments. He would've seen the disputed payments, yet he didn't raise any concerns until later that day at 7.42pm.

I've considered Mr L's evidence that his ex-girlfriend made the disputed payments. I asked Mr L if he asked her to pay back the money. He said she denied making the payments. He didn't report her to the police but reported the transactions to Nationwide, even though the police later became involved in their relationship. He originally told us that he usually visited his children at the weekend at their home and whilst there he would hang his jacket downstairs and his wallet was in the pocket of his jacket. This implies there was an opportunity for his ex-girlfriend to remove his card and note down the details.

However, he said he wasn't at his ex-girlfriend's house on 16 February 2019. He said she must have planned the fraud on an earlier visit. I'm afraid I find it hard to believe she would wait a week, if not longer, before using the card details and that she would use it for gambling instead of buying goods, although Mr L suggests she did this to spite him rather than to benefit.

He also told us he hadn't been back since his last visit, which was before 16 February 2019. Yet, according to the mobile banking audit, he logged on from the IP address linked to his ex-girlfriend's house on 2 March 2019 and was using it for nine hours. I appreciate he visits his children, but the evidence suggests that perhaps the relationship with his ex-girlfriend is not as acrimonious as he says it is.

Mr L also maintains that he didn't – and doesn't - own an iPhone 8. I've looked at the audit report for his mobile banking. It clearly shows an iPhone 8. I asked Mr L how his ex-girlfriend would know his log in details, if it were her phone. He replied vaguely that he'd left paperwork in her loft. I'm afraid I don't think his ex-girlfriend was logging on to his mobile banking.

All in all, I'm afraid I don't find Mr L's testimony to be persuasive or credible. Ultimately, I must base my decision on what I think is most likely to have happened. On balance, considering all the evidence, including the technical evidence and Mr L's spending habit, I think it's more likely than not that he authorised the disputed payments. I think it's fair and reasonable, therefore, for Nationwide to refuse a refund.

I'm sorry this will be disappointing news for Mr L, but I hope the reasons for my decision are clear.

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 March 2021.

Razia Karim
Ombudsman