

The complaint

Mr I is unhappy National Westminster Bank Plc (“NatWest”) have held him liable for transactions he’s said were carried out by scammers.

What happened

In November 2020 Mr I opened a current account with NatWest. On 4 February 2021 Mr I says he withdrew £100 from an ATM. He’s said he recalls there being between three and six people nearby all around two metres away from him in accordance with social distancing measures in place at the time.

Mr I says he thinks one of these people must’ve seen his PIN. And, after he withdrew money from the ATM taken his card. Possibly because he dropped this after he’d withdrawn his cash. In the days following Mr I’s withdrawal scammers made eight withdrawals from his account - six via ATMs and two in branch - totalling over £4,300.

On 7 February 2021 it seems Mr I checked his account online and realised the money had gone missing. According to its records he reported the matter to NatWest on 8 February 2021. NatWest investigated the matter but concluded no fraud had taken place. It made the decision to close Mr I’s account and loaded a Credit Industry Fraud Avoidance System (CIFAS) marker against him.

Mr I made a complaint but NatWest didn’t overturn it’s decision. He brought the complaint to our service and our investigator upheld the complaint in part. They felt there was no plausible point of compromise for Mr I’s card and PIN so they felt he should be liable for the transactions he’d disputed. But, they felt the burden of proof was higher for loading a CIFAS marker against him, and they didn’t feel NatWest has sufficient proof to do this. The investigator asked NatWest to remove the marker.

Neither Mr I or NatWest accepted the investigator’s findings so the complaint has been passed to me to make 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.

Has NatWest been reasonable in holding Mr I liable for the transactions?

The regulations relevant to this complaint are the Payment Services Regulations 2017 (PSR’s). I won’t quote them directly here but, broadly speaking they set out when a customer is responsible for the transactions on their account – typically when they’ve been authorised by the consumer in some way. And where there’s a dispute about whether a customer authorised a transaction there needs to be evidence to support the bank’s case if it wishes to hold the customer liable.

In this case NatWest feels it has enough evidence to hold Mr I liable for the transactions he's said were carried out fraudulently. And, there isn't a great deal of evidence available in this case aside from Mr I's testimony around what he thinks might've happened.

But overall, based on the balance of probabilities and the evidence I've seen I don't think the explanation Mr I has provided is plausible. So I don't think NatWest is acting unreasonably in holding him liable for the transactions. In reaching this conclusion I've taken the following information into account:

- During the time Mr I made the cash withdrawal he says must've been the point of compromise, social distancing measures were in place in the UK due to the pandemic. NatWest's records suggest when he reported the fraud Mr I confirmed everyone around him was complying with these measures. He also said the same to our service when discussing the event. So this means everyone was around two metres away from him. I don't think it's plausible that anyone standing this distance from Mr I would have been able to see his PIN as he used the cash machine – unnoticed by both Mr I and the other people waiting.
- Later in our investigation Mr I said someone was actually stood to the side of the ATM while he used it. It's not clear why this version of events changed when until this point he'd said the closest people to him were three or four feet directly behind him. He's previously said he would've noticed were they closer as this would've seemed strange. It's not clear why he would remember this detail now but wouldn't have noticed at the time given how significant this would've been in light of the money he says was stolen.
- Mr I has said he must've dropped his card at the ATM which is how someone would've accessed both his card and PIN. But he's said there were numerous people around him when he used the ATM – between 3 and 7 as his recollection has changed over time. And it doesn't seem likely all of these people were known to each other and working together. So if Mr I had dropped his card and someone else had picked it up and left the ATM with it, it seems unlikely no-one else would've have noticed or said anything about this.
- According to the activity on Mr I's account, after someone took his card they entered the PIN correctly first time, checked his balance – which would've shown over £4,000 in his account – then withdrew £50 from an ATM. It's not clear why the fraudster only would've taken £50 when they had seen much more would've been available to them.
- Mr I claims the fraudster made two branch withdrawals from Mr I's account. One the day his card went missing and one a day later. Both branches were near where Mr I says his card likely went missing. It's unusual for a fraudster to go into branch to make withdrawals with a stolen card. This puts them in direct contact with the bank staff who might already have been informed by the account holder the card has been stolen. It seems even more unusual a fraudster would risk this again the next day when most people likely would've noticed their card was missing and reported it stolen. It seems the fraudster would be taking a considerable risk in making these withdrawals, particularly the second one and this isn't typical of this kind of fraud.
- NatWest has provided me with a CCTV image of someone making a deposit to the account – which Mr I has confirmed was him – and a CCTV image of the person

making one of the in-branch withdrawals Mr I has disputed. The two people do have some similarities and the differences could be an attempt by Mr I to change his appearance. I'm not an expert in this field, so I can't say whether it's more likely than not they are the same person. And whilst NatWest feels it certainly is, it doesn't appear it has sought expert opinion on this either. I accept they are similar enough that it's possible they are the same person. But, I'd also add that even if they were different people, it's possible the withdrawals were still being made with Mr I's knowledge or consent. So although I've taken this point into account in the round, I haven't relied on this piece of evidence.

- The amounts withdrawn by the fraudster aren't consistent with what I'd generally expect to see from a fraudster who had access to a stolen card and PIN. For example, Mr I says they went into branch to make a withdrawal - they withdrew £1,500 and waited until the next day to withdraw £1,000. It's not clear why they wouldn't have withdrawn as much as possible on the first visit, given they'd checked the balance and were aware there was more than £4,000 in the account.
- It also seems unusual fraudsters didn't maximise or attempt to maximise the daily ATM withdrawal limit from the account, which appears to have been £500. For the first two days Mr I says fraudsters had his card and PIN they withdrew £50, £350 on 4 February, £100, £400 on 5 February, £500 on 6 February and £410 on 7 February. The only failed attempt at a withdrawal was on 7 February 2021 when the fraudster attempted a further withdrawal of £250. Which again seems a strange amount to attempt to withdraw given they'd withdrawn £410 that day already and this is the only day they attempt to withdraw more from an ATM than the withdrawal limit.
- Mr I has said the £4,000 that was taken by fraudsters was money he deposited in his account a few weeks before the fraud took place. He's said this money was borrowed from family in order to buy a van, and he'd arranged with a local mechanic they were going to help him buy one, but he hasn't been able to provide any evidence to support he was looking to purchase a van or had viewed any. And it seems a little strange he'd borrowed this specific amount to buy a van before he'd found one.
- Mr I has said he put his card in his back pocket with the £100 he withdrew when he used the ATM. He says he then paid for his shopping with the £100 he'd withdrawn. He's also said following the withdrawal he went shopping and paid in cash. It seems strange he didn't notice his card was missing when he took his money out of his back pocket – where he expected his card to also be.

Overall, taking all the available evidence into account, on balance, I don't think Mr I has provided a plausible explanation as to how the transactions he's disputing have been carried out by fraudsters. So I think it's reasonable NatWest has held him liable for them.

Has NatWest acted reasonably in applying a CIFAS marker?

In this case NatWest loaded a marker for category six misuse of facility with CIFAS as it feels Mr I has deliberately misrepresented the fraud he says has taken place on his account.

CIFAS guidance says the business must have carried out checks of sufficient depth to meet the burden of proof set by CIFAS, which at that time was that NatWest needed to have enough information to make a formal complaint to the police or other relevant law enforcement agencies. And that any filing should be for confirmed cases of fraud, rather than mere suspicion.

In this case, I don't think there is enough evidence to confirm Mr I has carried out fraud to the level required by CIFAS. I think the circumstances he's described are suspicious, and I think what he's said is implausible based on the balance of probabilities. So according to our services approach to this type of complaint, I think it's fair and reasonable that NatWest is holding him liable for the transactions he's disputed. But the requirements of loading a CIFAS marker are much higher than the balance of probabilities, or what's more likely than not. It requires confirmation the consumer has acted fraudulently.

Although implausible, and in my opinion unlikely, in this case I think it's reasonable to accept Mr I's card and PIN could've been taken in the circumstances he's described. I don't think the evidence NatWest has shown me proves he's deliberately, falsely reported fraud - which is what loading the CIFAS marker requires.

I'm aware NatWest feels it has CCTV images of Mr I deposited cash into the account and believes the same person, also on CCTV, withdrew money he says was taken by scammers. So I understand that based on this it feels it has proven Mr I has falsely reported fraud. But as I've explained, I haven't relied on the CCTV images because I can't reasonably conclude it is the same person. It's possible, but I'm not an expert in this area. And as far as I've seen NatWest hasn't obtained expert opinion in reaching this conclusion either.

And, I think it's important to note Mr I considers himself to have a physical disability which impacts the way he moves. He believes it would be clear from the way the fraudster moved it was not him. NatWest seems to have relied on CCTV images rather than CCTV footage of the transactions. Overall, I don't think the CCTV images can be relied on.

Based on the evidence I think can be relied on in this case, I don't think there is proof Mr I has deliberately, falsely reported a crime to the level required in order to load a CIFAS marker. So, I don't think the CIFAS marker has been fairly applied in this case and should be removed.

My final decision

My final decision is that I uphold this complaint in part. Mr I should be liable for the transactions he's disputed but National Westminster Bank Plc should take the following action:

- Remove Mr I's entry on the Credit Industry Fraud Avoidance System relating to this case

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 12 November 2021.

Faye Brownhill
Ombudsman