

The complaint

Mr C complains that Nationwide Building Society failed to refund transactions he didn't recognise.

What happened

Mr C transferred a large sum of money into his Nationwide account after he'd won the money using an online betting merchant I'll refer to as M. The funds were transferred just before Christmas and over the holiday period Mr C says he used the account to withdraw cash from Automated Teller Machines (ATMs) on a few occasions. He explained that he tried to use his card on New Year's Eve, when he realised his account was overdrawn.

Mr C has stated that he notified Nationwide the next day about the problem, but Nationwide have said they were first contacted by Mr C four days later about his losses. In his call to Nationwide, Mr C stated he hadn't carried out a series of transactions to an online betting merchant who I'll refer to as V. Mr C had genuine relationships with both M & V. Mr C said he'd been restricted from using both their websites prior to Christmas. But later in the conversation, Mr C stated he'd sent information to V in order to remove the restriction. He also confirmed he'd carried out gambling transactions with V which resulted in winnings that were paid into his account and these were after he'd paid his large sum into the account. Mr C said he didn't recognise many of the transactions and told Nationwide he was out with friends when some of the transactions were made or at home. Mr C said the level of betting was different to his normal level and he would never bet the larger amounts that he was now disputing.

Mr C told Nationwide he thought his phone had been hacked and in a later call he said he'd been in touch with "cyber " police in London who wanted to examine his phone. Nationwide asked for evidence of this – but never received anything from Mr C.

Nationwide looked into the transactions and believed Mr C was responsible for them as they were done using his debit card and the transactions had matching IP addresses to earlier undisputed transactions. Nationwide advised Mr C that they weren't going to refund him, and Mr C wanted to dispute another earlier set of transactions made mainly to M, which he also claimed were fraudulent.

Note: IP addresses are a means to identify physical locations that online transactions are connected to and can be the actual physical location or other locations connected to the provider of the data services.

Nationwide declined to refund any of the transactions and issued a 60-day notice to close the account. Mr C made a complaint to Nationwide who looked into the situation. They didn't change their position and Mr C then brought his complaint to the Financial Ombudsman for an independent review. It was looked into by one of our investigators who sought evidence from both parties. Mr C maintained that he wasn't responsible and that his phone had been hacked. He told our investigator that he couldn't use his account with V because it was restricted. He said a similar complaint he'd made to another bank had been accepted as fraud – so he couldn't understand why Nationwide had turned his claim down. Mr C

confirmed no one else had access to his banking details or were given permission by him to use them or his card details.

Nationwide provided evidence of the use of Mr C's account activity including use of his online banking. IP address data was also sent showing a consistent address was used for earlier undisputed transactions that matched the disputed activity. Nationwide believed the incoming large payment was used to fund all the following disputed payments. Nationwide later removed some of the service charges they'd applied to Mr C's account.

Our investigator thought it was reasonable for Nationwide to hold Mr C liable for the transactions. It was noted that Mr C had used an ATM several times during this period to make withdrawals – and the account balance was printed on the receipts, also that Mr C had checked his account using his online banking much earlier than when he'd reported it. So, he was aware of the losses for some days before notifying Nationwide. Our investigator pointed out that the IP address data was consistent and Mr C's claim that his account was suspended by both V & M wasn't supported by the evidence he'd supplied. Mr C's complaint wasn't upheld, and he asked for a further review.

It's now 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Nationwide can hold Mr C liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Authorisation is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, Nationwide have supplied evidence that shows the transactions were made using Mr C's card details. I'm satisfied the evidence shows the disputed transaction was authenticated.

Consent refers to the way in which Nationwide and Mr C agreed to operate the account to allow Nationwide to make payments on Mr C's behalf. For example, Nationwide's terms and conditions set out that if a payment is arranged online or over the phone and the correct card details are entered, then Nationwide accept that the instruction to make the payment is authorised by the account holder. So, because Mr C's correct debit card details were entered into the merchant's website, I'm satisfied that consent was given and the disputed transaction was authorised. But, there are exceptions where it wouldn't be appropriate for Nationwide to hold Mr C responsible, for example if his card details were used without his permission.

Mr C transferred a large sum into his Nationwide account before Christmas and stated he'd only used an ATM a few times to withdraw cash. When he spoke to Nationwide, which was several days after he noticed his account was overdrawn, he told them he hadn't used his account with V because he'd received a notice that his account was restricted. V had asked for identification information as part of their security checks to be sent to them. In the same call, Mr C tells Nationwide that he responded to V with documents to enable his account to be used. He confirmed that two transactions he made with V had resulted in winnings being paid into his account. It's apparent from his winnings that his account wasn't suspended because he was able to make bets which resulted in the payments into his account. So, I don't think that Mr C was unable to use his account because the evidence indicates he was successfully gambling at the time he denied making a large number of transactions.

Mr C has claimed that his phone had a “bug” in it, and he’d been in touch with the “cyber” police. Mr C told Nationwide who asked for evidence of this so they could consider it. Mr C didn’t provide any evidence of this to Nationwide or the Financial Ombudsman. I would have thought this was critical evidence that Mr C wasn’t involved, but as it hasn’t been sent, I’m unable to consider this as a realistic possibility to explain how the disputed transactions were made.

Mr C made the case that another bank had refunded him when he made a similar request to them. He supplied a letter from the bank in question which I’ve examined. The letter explains that Mr C’s complaint isn’t being upheld and he should contact M about the circumstances which appear to be both a refund from M and other payments to Mr C being taken back by M. So, I don’t think that it’s correct to say another bank refunded him because the letter states they weren’t upholding the complaint. What appears to be the case is that the merchant, M, made a refund and took other funds back from Mr C.

Mr C said he’d notified Nationwide the day after he’d noticed his card was declined. The evidence I’ve seen doesn’t show he contacted them at that point, rather it was several days later and the call I’ve listened to appears to be the first occasion it was raised with Nationwide. What that means here is that Mr C knew several days before he told Nationwide that there had been a problem with his card. He’d also checked his online account to examine his statements several days before notifying Nationwide. So, I think it’s fair to conclude he knew the full extent of the problem quite some time before he told them. I would have thought that the loss of such a large amount of money would have resulted in a much quicker notification to Nationwide.

Mr C confirmed he hadn’t provided his card details or given his phone to anyone else to use. I’ve already made a finding that I don’t think a “bug” in his phone is responsible and as no one else knew the card details, I don’t think the transactions were carried out by anyone unknown to Mr C. The IP address data held by both M and Nationwide is consistent with undisputed transactions and what that means is that the same location was used to make transactions that Mr C accepted as genuine and those that he’s disputed.

It seems unlikely that anyone without his knowledge could gain access to the same location to carry out transactions using his debit card. Disputed transactions were claimed with both V & M and I find it difficult to imagine a plausible reason how someone would gain access to Mr C’s accounts without his knowledge because each one would require information known only to Mr C, including his passwords. I’d also question why they would carry out transactions with a gambling merchant and that’s because any winnings would likely be paid back to the account they came from, so it seems unlikely anyone could gain any benefit from the gambling apart from Mr C.

Mr C made an additional complaint about service charges added to his account by Nationwide. By the time Mr C brought it to our attention, Nationwide had already removed those charges, so I don’t need to consider this further.

Taking everything into account, I think it’s more likely than not that Mr C was responsible for making these transactions or allowing someone else to use his account. I think it’s reasonable for Nationwide to hold him liable for them and I won’t be upholding this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or

reject my decision before 28 March 2022.

David Perry
Ombudsman