

The complaint

Mr K has complained that National Westminster Bank PLC (NatWest) won't refund him for disputed transactions he didn't make or authorise.

What happened

Mr K has a current account with NatWest. Between 28 March and 28 April 2020 Mr K's debit card was used to make several deposits into online gambling accounts totalling just under £2,000 which he says he didn't make or authorise.

Mr K says he wasn't using mobile or online banking at the time and so didn't notice the transactions until the end of April 2020. When he realised what had happened Mr K contacted NatWest, and in the course of its investigations NatWest discovered that one of the online gambling accounts payments were made to was in the name of Mr K's partner.

Mr K has explained that he had previously put his card details into his partner's phone to buy some add-ons for a game her children played. Mr K says she must have saved his card details, and that she then used his card again without his permission to make the payments that are the subject of this complaint. Mr K says his partner – who he has since separated from – has admitted that she used his card and that she has previously done something similar to a relative of hers.

NatWest decided not to refund the disputed transactions. It concluded that Mr K had made the transactions himself or allowed them to be made. In summary it said:

- Mr K's card number and CVV were used to make the transactions
- Mr K had given his card details to his ex-partner

Mr K disagreed with NatWest's decision. So, he brought his complaint to this service where one of our investigators looked into the matter. Based on the evidence he thought Mr K had authorised the transactions because he could not see a clear point where Mr K's card details could have been compromised. He noted that the transactions for game add-ons that Mr K had referred to as the point he'd put his card details in his ex-partners phone were actually after some of the disputed transactions had already happened. He also noted that Mr K's ex-partner would have needed the CVV from Mr K's card to make any payments, even if his details had been saved in her phone.

Mr K disagreed. He says his ex-partner could easily have taken his card at any time as she lived with him, and that as the CVV is only three numbers it would be easy for her to remember. He also noted that the transactions were unusual for his account and that NatWest should therefore have taken steps to stop them.

I issued my provisional decision on this case on 21 July 2021, explaining why I was not intending to uphold this complaint. NatWest has confirmed it agrees with my provisional findings. Mr K has responded to say that he maintains he did not consent to his ex-partner making these payments.

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.

In my provisional decision I explained the following:

“Generally speaking, if the evidence suggests its more likely than not that Mr K authorised the payments, NatWest is entitled to hold him liable. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). Mr K says he didn't make the disputed transactions, so my primary concern is to come to a decision about whether or not I think Mr K authorised the transactions by making them himself or allowing someone else to make them on his behalf.

Having reviewed NatWest's technical evidence, I'm satisfied that Mr K's card details were used to make the disputed transactions and that they were authenticated. But, the regulations relevant to this case say that this is not on its own enough to enable NatWest to hold Mr K liable for them. So, I also need to think about whether the evidence suggests that it's more likely than not that Mr K consented to the transactions being made.

I'm satisfied from what I've seen that its likely Mr K's ex-partner did make the payments that are in dispute here. At least one of the online gambling accounts used was in her name, and Mr K's explanation for what has happened here does seem plausible. But there's a concept of apparent authority which relates to the Payment Services Regulations. I can't say for sure that Mr K definitively authorised his ex-partner to make the transactions. But it's clear she knew Mr K's card details – including his CVV. This does suggest Mr K allowed his ex-partner to use his account, whether that be by giving her the card details directly or by putting them into her phone so they could be used for a purchase.

Under the Payment Services Regulations, we consider the issue of the relationship between the account-holder, formally Mr K, and the person making the transactions. In this case that's his ex-partner. I think, taking into account all the circumstances of this case, Mr K authorised her to act as his agent: to make transactions on his behalf. He may not have thought about it in this way of course. He wouldn't necessarily have considered that by giving her permission to use his card details once, she could therefore go on to use his card details again for payments he hadn't specifically told her she could make. So I don't doubt there were individual transactions which Mr K didn't authorise. But because of the nature of their relationship, he was giving her apparent authority to carry out those transactions he subsequently disputed. In order to remove his apparent authority after giving her his card details Mr K would have needed to do something to ensure she couldn't use them again, such as clearing her browser history or some other act which would have ensured that any stored details in her phone weren't kept. But I've not seen anything to suggest that Mr K did that. On this basis I don't believe it would be fair and reasonable to ask NatWest to refund Mr K for the disputed transactions.

Mr K has also said that the bank should have spotted the transactions and stopped them from going through. I can't decide Mr K didn't authorise them just because NatWest didn't block the payments. I have to look at the evidence, which in my view connects him to the disputed transactions. But in any case, Mr K had previously made very similar payments to online gambling companies, so I don't think that the transactions his ex-partner made were unusual enough to have flagged to NatWest that something untoward might be going on.”

I appreciate Mr K taking the time to reply to my provisional decision, but while I understand why he says he did not consent to his ex-partner making these payments from his account, for the reasons I've explained above I'm satisfied that he did give her 'apparent authority' to

make the payments. So I remain satisfied that it was reasonable for NatWest not to refund them.

I know this will be disappointing for Mr K, but for these reasons I find that NatWest has treated him fairly here, and so I won't be asking it to do anything more.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 September 2022.

Sophie Mitchell
Ombudsman