

The complaint

The estate of Mr C complains that Nationwide Building Society won't refund payments that had been disputed by him.

What happened

Mr C had raised a complaint with Nationwide before he passed away. This related to three payments to an online gambling merchant which totalled £800. He told Nationwide that he didn't authorise these and wasn't getting a response from the merchant.

Nationwide said it wouldn't be refunding the money. The merchant told it that the payments were made to an online account in Mr C's name which had been open since 2019. Mr C had used this genuine account with the merchant. Nationwide also didn't think this likely behaviour of a fraudster as any winnings would be credited back to the gambling account.

Our adjudicator didn't recommend that the complaint be upheld. Mr C had a genuine account with the merchant with his correct details. And these payments had been made to this account. There was no explanation of how someone unknown to him could have accessed this account. The payments in dispute were processed as follows: £300 on 28 April 2021; £200 on 5 May 2021; and £300 on 6 May 2021. But Mr C had accepted he made genuine payments from March to May 2021 of similar amounts. And he wasn't disputing those which was inconsistent with there having been fraud using his details. She considered that he had authorised all the payments.

Mr C had written to this service to say he didn't agree. He said he had tried to contact the merchant numerous times but not had any clarification. And he wanted this service to look into the way these payments were authorised. The complaint is now brought by his estate. And the representatives of the estate want to pursue this complaint and said that they'd asked for information from Nationwide about the account. No further comments have been provided to this service after the complaint was referred 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.

I need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated say with card details. And if they weren't authorised Mr C wouldn't generally be responsible for them.

So, I will be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of how these payments were made?
- Were the payments on the account authorised?

The payments were made with Mr C's card details online. And I'm satisfied were authenticated. The issue is whether he authorised them.

I've listened to calls Mr C made to Nationwide in May 2021 to report what happened. He'd seen the payments on his account and thought that there were too many. He said he limited himself to about £300 spending a month through the merchant. And as was shown happened here said would never have made two payments in a day and payments so close together. On 5 May 2021 I can see a genuine payment for £300 processed at 12:19pm and the other that Mr C didn't recognise at 5.01pm. I note to avoid any confusion that these were shown on Mr C's statement as actually being debited to the account the following day. Mr C disputed some of the payments as our adjudicator had set out above.

It's accepted that Mr C had an account with the merchant and had used it before. I can see entries on an earlier statement from November 2020. Between March and May 2021 there was a total of £2,200 paid and of that £800 was disputed. The merchant was contacted by Nationwide as I'd expect and confirmed the payments had gone to a genuine account with Mr C's details and didn't see anything of concern. There is no explanation about how and why an unknown third party would be able to access that account and make payments. And a fraudster in possession of Mr C's details would likely look to access money rather than say gamble.

I appreciate that there was an accelerated pattern of gambling spend at that time. I can understand why the estate of Mr C wanted to pursue this as Mr C had been certain he hadn't made these payments himself. But I'm afraid I don't have a reasonable basis to find it most likely that the payments weren't authorised for the reasons I've given. So, I won't be asking Nationwide to do anything further.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 17 February 2023.

Michael Crewe
Ombudsman