

The complaint

Mrs U complains National Westminster Bank Plc won't refund transactions she didn't make or otherwise authorise.

What happened

The full details of this complaint as well known to both parties, so I won't repeat them in full here. Instead, I'll recap the key points and focus on giving reasons for my decision:

- In late April 2021 Mrs U discovered that over £11,000 had been spent using her debit card.
- These payments debited Mrs U's account between 16 February 2021 and 28 April 2021 and Mrs U has said her daughter made the payments without her permission. The payments were to an online entertainment service, which I'll call G.
- NatWest declined to refund the payments as it said they were not in-line with any fraud trends and the debit card had been in Mrs U's possession during the period in question.
- Our Investigator upheld the complaint, they weren't persuaded Mrs U authorised the transactions or otherwise consented to them. And as the payments were for a distance contract the provisions in relation to a failure with intent or gross negligence didn't apply.
- NatWest didn't reply to the Investigator's findings, so the complaint has 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.

Having done so, I agree with the conclusions reached by the Investigator for the following reasons.

Under sections 77(4)(d) of the Payment Services Regulations (PSRs), except where a payer has acted fraudulently, the payer isn't liable for any losses incurred in respect of an unauthorised payment transaction where the payment instrument has been used in connection with a distance contract. A distance contract means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer subject to some exclusions (as per regulation 5 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013).

There isn't any provision within the PSRs which holds Mrs U liable for a transaction made via a distance contract if it was unauthorised, even if she acted with gross negligence or intent.

And the terms and conditions of Mrs U's account also state that any unauthorised payments made via a distance contract will be refunded.

All of the transactions in dispute here were online payments. As the payments instrument was used in connection with a distance contract, gross negligence (or a failure with intent) isn't a factor for my consideration. Under the PSRs, NatWest can only hold Mrs U liable for the payments, if she either authorised the transactions or she acted fraudulently. There is no persuasive evidence, nor has NatWest sought to argue, that she acted fraudulently.

Therefore my consideration is solely in relation to whether Mrs U authorised the transactions. The payments were made using Mrs U's legitimate card details when the card was in her possession. It appears that Mrs U's card details had been saved by her daughter and then used with the daughter's online account with G. So the question here is whether Mrs U allowed her daughter to use her card details in this way and therefore consented to the transactions being made.

I've listened to a conversation Mrs U had with NatWest on 16 February 2021. At that time a small number of payments to G had been flagged as potential fraud and so NatWest had contacted Mrs U to ask her to confirm these payments were genuine. When Mrs U spoke with NatWest she explained that her daughter had got hold of her card details and used them without permission to make payments to G. During this call she didn't indicate that she had ever willingly given her card details to her daughter to use.

I think it's unlikely that, following this conversation, Mrs U would then have given her card details to her daughter or otherwise allowed her to use them for payments to G. On this basis I consider it more likely than not that Mrs U did not consent to these payments being made. It follows that these payments should therefore be treated as unauthorised and, as per the PSR's and the terms of Mrs U's account NatWest is therefore not able to hold her liable for them and they should be refunded to her.

Putting things right

To resolve this complaint NatWest should:

- Refund the payments made to G between 17 February 2021 and 27 April 2021 (inclusive)
- Pay 8% simple interest (calculated from the date the payments were made until the date of settlement)

My final decision

I uphold this complaint. National Westminster Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs U to accept or reject my decision before 29 December 2022.

Sophie Mitchell
Ombudsman