

The complaint

Mrs T has complained that National Westminster Bank Plc (NatWest) won't refund transactions she says she didn't make or otherwise authorise.

What happened

Between March 2018 and January 2020, several hundred online purchases were made from Mrs T's NatWest account to Argos Online using her card details, usually for small and round amounts. These payments totalled about £11,000 over the years.

Mrs T reported this in January 2020, saying she'd recently noticed a run of such payments depleting her balance. She explained she didn't really use online banking, didn't check her account often, and had been dealing with caring for a relative and a death in the family, so she didn't notice these payments before. She confirmed that she was only disputing the Argos Online payments, and all the other account transactions were genuine.

NatWest initially told Mrs T there'd been no payments to Argos on her account. They later accepted they'd been mistaken and told Mrs T they'd investigate, and that she didn't need to go to the police. But NatWest then refused to investigate without a police reference number, despite what they'd told her. And after Mrs T's partner phoned NatWest to enquire about the case, they refused to deal with her until she went to branch with ID. Mrs T asked for copy statements so she could see how far back the payments went, but NatWest didn't send her them. Then when Mrs T was unsure about how many payments had been made to Argos Online over the years and therefore what amount she should dispute, NatWest accused her of being inconsistent.

So NatWest did little investigation at the time, and evidence from the merchant is no longer available. From what NatWest did find, the purchases had been made in Mrs T's partner's name, were delivered to an address some distance away from where she and her partner lived, and were made from IP addresses that did not match Mrs T's genuine activity. But NatWest felt that because the payments had been made in Mrs T's partner's name, it was a civil dispute between Mrs T and her partner. They declined to help further.

Our adjudicator looked into things and suggested Mrs T might have given her partner the apparent authority to use her account. Mrs T didn't agree, so the complaint's been passed to me to decide.

I sent Mrs T and NatWest a provisional decision on 7 September 2022, to explain why I thought the complaint should be upheld. In that decision, I said:

According to NatWest's technical evidence, the payments in dispute were made online using Mrs T's correct card details. This is not enough, on its own, for NatWest to hold Mrs T liable – they also need to be able to evidence that Mrs T consented to the transactions. Otherwise, NatWest have to refund them.

Because NatWest didn't really investigate things at the time, they have not provided much evidence that Mrs T consented to these payments, and the merchant has said it's been too long to be able to provide further information now. There are a number of ways in which Mrs T's card details might have been compromised, and I've not seen any evidence that her physical card was used, nor any two-factor authentication, and so on. It looks like these payments just needed the card details.

The goods were delivered in someone else's name, to a different address, some distance from where Mrs T and her partner actually live. And while NatWest didn't get information about what was purchased, it seems unlikely that Mrs T would need £11,000 worth of things from Argos in repeated small, round amounts over just two years, and it seems unlikely that she'd deliver them all to someone else's seemingly unrelated address several towns over. Given the repeated round amounts, I'm concerned that the payments may have been for vouchers or other goods that could easily be passed on.

Further, from what little NatWest could provide, it seems that the online payments were made from an IP address which does not match Mrs T's genuine activity. This also suggests that the payments may have been fraudulent.

So based on what I've seen so far, I do not think NatWest have evidenced that Mrs T consented to these payments, and I'm not persuaded that she did. So I don't think NatWest can hold her liable for them. It follows that I plan to direct NatWest to give Mrs T a refund.

Our adjudicator suggested Mrs T might have previously given her partner authority to use her account. But this is too assumptive – there's no evidence which shows that Mrs T gave her partner such apparent authority. And such authority doesn't last forever after being given once – so there's nothing to say that such authority would've stretched to all these Argos Online payments, which Mrs T otherwise seems not to have consented to. And in any case, given that the delivery address and IP addresses didn't match Mrs T and her partner's location, I don't think we have enough to conclusively say that Mrs T's partner made these payments in the first place, let alone with Mrs T's authority. It's possible a fraudster may have used Mrs T's partner's name in order to make the purchases seem more legitimate.

NatWest may argue that Mrs T was grossly negligent, such as in not checking her account more often. But these online purchases were distance contracts, and given the merchant, they won't be excepted contracts like financial services or investments. Certainly, since NatWest didn't get the proper evidence from the merchant to show what was bought, I cannot fairly conclude that any of these were excepted contracts. I also note that a number of these payments were made from a credit facility. And because of the rules around distance contracts and credit facilities, NatWest cannot hold Mrs T liable for the disputed transactions on the basis of gross negligence. I have also not currently seen anything which shows that Mrs T was partly to blame for the loss.

I do, however, accept that under the Payment Services Regulations, NatWest do not have to refund the payments which were made more than 13 months before Mrs T reported them as fraudulent – so long as they were made from a positive balance, and not from a credit facility like the overdraft. And in this case, I can see that all of the disputed payments from more than 13 months before Mrs T's fraud report were made from a positive balance, and not from her overdraft. So NatWest are correct that they do not need to refund those.

Lastly, I am concerned with how NatWest handled this case. For example, telling Mrs T there were no Argos Online payments on her account, or telling her she didn't need to go to the police then refusing to help without a police reference number. I do not see what a police reference number would have achieved here, and NatWest's mis-advice really delayed things and caused Mrs T unfair distress. Similarly, NatWest didn't send Mrs T the statements she asked for to help her see how many transactions there'd been to Argos Online. Then NatWest held this against her when she was unable to conclusively say how much she wanted to dispute. And having listened to Mrs T's calls with NatWest, I note that some of their staff were unnecessarily impolite and unhelpful. It looks like NatWest caused Mrs T some real stress. That needs to be put right too.

When a business gets things wrong like that, we often tell them to pay compensation – to acknowledge their errors and the impact they had. In terms of the amounts, it's worth bearing in mind that we're not here to punish businesses or issue fines. Looking at our guidelines for compensation, I think NatWest should pay Mrs T an additional £250 for the trouble and upset caused.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 5 October 2022. NatWest agreed to the proposed redress. We didn't receive a reply from Mrs T.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct National Westminster Bank Plc to:

- refund the disputed transactions, except for the ones which were made more than 13 months before Mrs T first reported this;
- for refunded transactions that were made from a credit balance: pay simple interest to Mrs T on those refunded transactions, at the rate of 8% simple a year, payable from the date they were last debited until the date they're returned[†]. This is to compensate Mrs T for the time she didn't have her money.
- for refunded transactions that were made from an overdraft: refund any interest, charges, or fees that were added because of those payments.
- pay Mrs T £250 compensation for the trouble and upset caused.

[†] HM Revenue & Customs requires NatWest to take off tax from this simple interest. NatWest must give Mrs T a certificate showing how much tax they've taken off if she asks for one. Mrs T may then be able to claim the tax back from HMRC if she doesn't normally pay tax.

My final decision

I uphold Mrs T's complaint and direct National Westminster Bank Plc to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 7 November 2022.

Adam Charles
Ombudsman