

The complaint

Mr J complains that Nationwide Building Society has held him responsible for disputed transactions and registered a fraud prevention marker against him.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. In summary:

- Mr J says that he did not make transactions to a gambling company. He explains that he had self-excluded from using gambling websites, so it was not possible for him to gamble. Initially Mr J said he was in a café at the time the transactions were made, but then said he'd been at home. He since said that he'd given his bank card to a friend so they could buy drinks, but the friend set up the gambling account and made these disputed transactions without his authority. Mr J later explained that he'd been forced to make these transactions.
- Nationwide refused to refund the payments. It didn't consider it was likely a fraudster was responsible for the disputed spending. It concluded Mr J had misused his bank account and reported the matter to Cifas. A marker was placed on the National Fraud Database. Nationwide also took the decision to close Mr J's account because of concerns about the way he'd interacted with building society staff.
- Mr J referred his complaint to this service. Our Investigator looked into the matter but did not recommend that the complaint should be upheld. He concluded Mr J had been inconsistent in what he'd said about the disputed transactions and was not persuaded that a third party had made them. He didn't think Nationwide had treated Mr J unfairly.

Mr J didn't accept the Investigator's findings. He said accounts with gambling companies that had not been verified could not be used to make any deposits or withdrawals so there was no reason for him to have jeopardized his name and money. He provided evidence to show that he'd applied for gambling blocks that were active at the time the disputed transactions were made. Mr J accepted that he'd changed his version of events but said he'd done so because he was scared to share what had really happened for fear of the consequences. He said he'd not been involved in what had happened and said the marker was having a negative impact on his life, costing him his dream job and preventing him from getting a bank account.

As no agreement could be reached, the complaint has been referred to me to decide.

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 do not consider that Nationwide needs to take any further action in relation

to this complaint. I'll explain why.

The disputed transactions

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, banks and building societies will be liable for unauthorised payments. If Mr J made the disputed transactions himself or agreed they could be made on his behalf, it would not be fair to ask Nationwide to refund them.

Mr J has given differing versions of events for the wider circumstances surrounding these payments. As there's been some dispute about what happened, I've considered whether, on balance, Mr J authorised the transactions that have been disputed – and so, in line with the relevant Payment Service Regulations, whether he completed the agreed steps to make the payments or gave consent for someone else to complete them.

Having looked at all of the available evidence, I think it's more likely than not that Mr J did authorise the transactions. It follows that Nationwide is entitled to hold Mr J liable for them. I say this because:

- Mr J has suggested that his friend made the transactions after being given his card to buy drinks at a birthday celebration. Mr J has not given much detail as to approximately what time this happened, where they were or whether his card was returned to him afterwards. Nonetheless, if this is how the disputed transactions happened, Nationwide can still hold Mr J responsible for them. By giving his friend his card, Mr J has given his friend permission to act on his behalf. Even if Mr J did not agree to or know about these transactions to the gambling company, providing his friend with the ability to make payments served to, in effect, authorise further spending with the card, even if the friend spent more than Mr J agreed that he could and in circumstances they had not discussed.
- It seems unlikely that Mr J's friend would have much to gain by using Mr J's card in this way. Mr J's friend could have used the card to buy goods or services instead, giving him a direct and immediate benefit. Transferring the funds onto a gambling platform creates an extra barrier to be able to use the money as his friend would also need to have access to the gambling account. Even if gambling was the motivation, it is difficult to see how Mr J's friend could have recovered any potential winnings as they could only be paid back to the account or card where the payments had been credited from.
- Mr J contacted the gambling company by live chat to report the transactions. The gambling company has confirmed that the IP address for the live chat matched the IP address used to access the account on its platform where Mr J's funds were deposited.
- Mr J said to Nationwide that *"to be honest I was forced to make those transactions and I didn't mean to do it."* If Mr J made these transactions himself, Nationwide didn't do anything wrong by acting on his instructions. Being pressured or coerced into giving consent for a payment doesn't make the underlying transaction unauthorised.
- I cannot ignore the information provided by the gambling company. It has referenced a conversation when Mr J's legitimate gambling account was blocked. The extracts show that the participant in that live chat said they were going to make a fake account using fake documentation to be able to access the platform and then raise a dispute about the transactions at a later date. Although Mr J has said he was not

involved in this interaction, I can't see how or why a third party could have accessed his account to make these comments, especially as it happened around six months before the transactions that are now in dispute.

The fraud prevention marker

The marker that Nationwide has filed is intended to record that there's been a 'misuse of facility' – in this case this is reporting a false disputed transaction claim.

To file a marker, Nationwide is not required to prove beyond reasonable doubt that Mr J is guilty of fraud or a financial crime, but it does need to show that there are grounds for more than mere suspicion or concern. The relevant guidance says:

- *"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police."*

In practice what this means is Nationwide needs to have evidence that Mr J has been deliberately dishonest in claiming that transactions were carried out on his account without his consent.

I've already considered whether I think on balance Mr J should be held liable for the disputed transactions. And I'm satisfied that he should. I'm not persuaded that these transactions were genuinely disputed when Mr J reported them to Nationwide. I think the number of changes to his account of the key events are a strong indicator that he knew rather more about the situation than he'd initially disclosed to the building society.

However, the bar for loading a negative fraud marker is a high one. The negative fraud marker has serious consequences for Mr J, so I've thought carefully about whether there's sufficient evidence to conclude that he has been intentionally and deliberately dishonest when raising a claim.

Based on all the information I have; I'm satisfied Cifas' evidential standard has been met. In cases such as this one where the key facts are less clear, I need to draw conclusions based on what I think is more likely than not to have happened. One of the factors I need to account for is how credible and persuasive Mr J's explanations for what happened are when weighed against the other information and evidence available to me. I have not found Mr J's version of events to be plausible. It has been inconsistent and doesn't add up with the sequence of events that Nationwide has evidenced from its own records or with the information obtained from the gambling company.

On balance, I find Nationwide has reasonable grounds to believe Mr J was knowingly involved in a fraud or financial crime and there's enough evidence for it to have confidently reported that conduct to the police. As this is the case, I don't think Nationwide has acted unfairly by recording a fraud prevention marker. It follows that I cannot fairly conclude that Nationwide should have to remove the marker now.

Closing Mr J's account

Nationwide made the decision to close Mr J's account without notice. In its final response letter, it explained that Mr J made threats towards staff and behaved in a way that was inappropriate and unacceptable towards staff members on a number of occasions. It closed Mr J's accounts with immediate effect and opted to write off the debit balance on one of his

accounts rather than interact again.

This action left Mr J without a bank account. I've no doubt that not having a functioning bank account has made things very difficult for Mr J, especially as he's described how difficult it is for him to obtain full banking facilities as a result of the fraud marker Nationwide has loaded.

It's generally for banks and building societies to decide whether or not they want to provide, or continue to provide, banking facilities to any particular customer. Having looked carefully at the surrounding circumstances, I think the building society was entitled to end its banking relationship with Mr J. It is provided for in the account terms and conditions, which explain that Nationwide can close accounts immediately in exceptional circumstances such as when it reasonably suspects a customer to have carried out illegal or fraudulent activity on the account or when a customer has been threatening or abusive towards staff. I'm satisfied that Nationwide has applied these terms fairly in this case.

Overall

I appreciate my decision will be very disappointing for Mr J. But even taking into account the impact the fraud marker is having on him, I am unable to fairly and reasonably conclude that Nationwide has acted incorrectly. I don't think it was inappropriate for Nationwide to decline the disputed transactions claim Mr J raised. I am also not persuaded Nationwide has treated Mr J unfairly by adding a fraud marker or taking the decision to close his account.

My final decision

My final decision is that I don't uphold this complaint.

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

Claire Marsh
Ombudsman