

The complaint

Mr D has complained that National Westminster Bank Plc unreasonably refused to refund unauthorised transactions which occurred on his bank account following the theft of his wallet and phone.

What happened

Mr D had recently moved to London for his job. He said he was in a pub with some work colleagues and afterwards he waited for his friends outside a supermarket when his phone and wallet were pickpocketed from him on the street on 9 November 2022. This was late in the evening too.

Mr D said given his payment details were on a taxi app, the thieves used a taxi to get away from the area that night so that is the first disputed transaction.

The next day using Apple Pay on his phone the thieves relieved his bank account of £3,109.95 which was his savings for a deposit on a new flat.

As Mr D had no phone and no wallet or bank cards, he had no access to any money at all. So, he struggled to be able to let Nat West know his cards and phone had been stolen. The banking app on his laptop required him to verify a code which would be sent to his mobile phone in order to verify himself. It wasn't until someone lent him enough money to get to a branch was Mr D able to report the theft to Nat West on 12 November.

Nat West decided there was no point of compromise essentially saying Mr D was grossly negligent in keeping safe his security details therefore it refused to refund him the disputed transactions.

Mr D then brought his case to us, the investigator didn't think Nat West had done anything wrong. As Mr D remained dissatisfied his complaint was passed to me to decide.

I issued a provisional decision on 1 August 2023 and I said the following:

'Having reviewed the investigation that Nat West carried out, I consider they made some assumptions early in the investigation that I don't believe are true. These were the belief Mr D had his left his phone and wallet on a table in the pub and not comprehending that without either his wallet or phone he had no access to any funds even to get him the travel costs to a bank unless someone lent him the funds. I am satisfied that Mr D's account as detailed above is more than likely the correct version. I don't consider anything turns on the timing of the notification either given the particular circumstances Mr D found himself in, with no access to either a phone or money. So, I don't see there was an undue delay in Mr D reporting the transactions. Mr D has told us that in his wallet was his driving licence which contained his date of birth. Sadly, Mr D's passcode to his phone and his Nat West banking app was his date of birth which was on his driving licence. I consider that's how the thieves were

able to both access Mr D's phone and therefore his Apple Pay and possibly banking app in order to authenticate all the disputed transactions.

Mr D said he explained to Nat West that as the thieves didn't have his debit card PIN, although they did have the card, they wouldn't have been able to use his card without the PIN. However, that didn't stop them using Apple Pay to make the transactions instead, given the Apple Pay card have a unique device account number unique to each phone and the thieves had his phone.

Given Mr D's driving licence was also in his wallet and unfortunately that contained his date of birth which was the passcodes for both his phone and banking app, so it's relatively simple to see how the thieves managed to make the disputed transactions from Mr D's account. There is no dispute that the transactions were authenticated coherently under the Payment Services Regulations (PSR's). That means Nat West was primarily under a duty to permit those transactions.

However, its system did flag up initially that the pattern of the transactions was unusual for Mr D. But following a verification text to Mr D's phone obviously made by the thieves, that flag was effectively stood down. But Nat West would have known that the phone making the payments through Apple Pay was the same phone it was sending the verification texts to. I would have expected a more proactive confirmation of the payments, more so since they had been flagged by the system as being suspicious. And more so since one of the payments is also to a pawnbroker, which wasn't a usual transaction for Mr D.

Under the relevant regulations which govern this type of complaint, namely the PSR's it says a consumer such as Mr D here should 'take all reasonable steps to keep safe personalised security credentials relating to a payment instrument or an account information service.' This is the primary obligation the PSR's place on consumers, such as Mr D here. The regulations go on to say that a bank can hold the consumer liable if they haven't met these obligations with either intent or gross negligence. So, I have to go on to consider whether Mr D has been grossly negligent with his personalised security details.

Gross negligence is a concept that goes beyond carelessness – it needs to be a rather significant failing that any reasonable person would have instead seen as a risk. This is quite a high bar to clear. We would consider gross negligence to be a lack of care that goes significantly beyond what we would expect from a reasonable person. So, the consumer's actions must be assessed against what a reasonable person in Mr D's position would have done, and their actions should only amount to gross negligence if what they did fell far below the standard expected of a reasonable person.

I consider it was naïve of Mr D to use his date of birth as a passcode to both his phone and banking app and especially both having the same passcode. More so since his wallet contained his driving licence with his date of birth on it. However, I don't consider this was so negligent so as to hit the high bar of gross negligence. Here was a young man, who had just come to London to start a new job where he was barely settled into that new job and was about to pay a deposit for his new flat. The thieves pickpocketed him in London late in the evening whilst he was waiting for his work colleagues to come of the supermarket. Mr D did report the matter to the police and continued to liaise with them too. And he has shown us that he had to buy a new phone. Whilst the thieves could access his Apple Pay, they couldn't access his card because they didn't have the PIN.

Taking all of the above in consideration, I don't consider this meets the bar of gross negligence. It was naïve of Mr D to choose that passcode being his date of birth and use the same one for both the phone and the banking app, but I consider sadly that happens far more frequently than not. Therefore, I don't consider this fell below the standard of the reasonable consumer in these circumstances. Therefore, I consider Nat West should refund all the disputed transactions with interest.

I have listened to the call recordings Nat West sent us which sadly didn't contain actual call recordings of what Mr D told them but instead contained the recordings of the person within Nat West initially answering Mr D's calls and then passing them through to the case worker for Mr D's claim. I don't consider the contents of these calls show Nat West up in a particularly good light bearing in mind the circumstances of Mr D's claim. I consider therefore that given Mr D's particular circumstances, the service he received from Nat West caused him some considerable upset and distress. Therefore, I consider it should now pay Mr D £250 compensation for this.'

Mr D responded that he was very pleased with the outcome in my provisional decision. Nat West also agreed with the outcome in my provisional 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.

On the basis that neither party had anything further to add and indeed agreed the outcome of my provisional decision, I see no reason to change that.

My final decision

So, for these reasons it's my final decision that I uphold Mr D's complaint.

I now require National Westminster Bank Plc to do the following:

- Refund the disputed transactions adding interest of 8% simple per year from the date those transactions were made to the date of the refund. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr D for HMRC purposes.
- Pay Mr D the sum of £250 compensation for the distress and upset it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 September 2023.

Rona Doyle
Ombudsman