

The complaint

Mrs B says National Westminster Bank Plc unfairly refused to refund transactions she reported as fraudulent on her account.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In late December 2023 Mrs B reported transactions on her account to NatWest which she didn't recognise. During NatWest's review Mrs B confirmed her son had access to her card and PIN as he assisted her with shopping due to her health. NatWest declined Mrs B's claim on the basis she had given her authority for the transactions.

Mrs B was dissatisfied with NatWest's response and referred her complaint to our service.

An Investigator reviewed Mrs B's complaint and recommended NatWest refund 50% of the disputed transactions. They reached this recommendation based on the highly unusual nature of the disputed transactions, and NatWest's failure to take adequate steps to safeguard Mrs B's account.

NatWest accepted the Investigator's recommendation. Mrs B rejected the recommendation and maintained the full amount should be returned to her. Unhappy with the Investigator's review, Mrs B asked for his complaint to be reviewed by an ombudsman.

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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider good industry practice at the relevant time.

Having done so, I agree with the Investigator's findings for broadly the same reasons, which I will go on to explain. Before I do so, I want to acknowledge that I understand my decision will be disappointing to Mrs B. But based on the evidence, I am satisfied a partial refund is fair in the circumstances.

Based on Mrs B's testimony and the available evidence it's highly likely the transactions were carried out with Mrs B's authority. Mrs B has confirmed she provided her son with her card and PIN and the disputed transactions were all authenticated using chip and PIN. However, Mrs B maintains she did not provide consent to the disputed transactions which occurred in the evening on 25 December 2022. £4,999.99 was moved from Mrs B's savings account to her current account using an ATM. £250 cash was withdrawn. And shortly after this a transaction of £9,999.66 was made to a takeaway shop.

Given the highly unusual circumstances of Mrs B's complaint I need to consider whether NatWest ought to have fairly and reasonably have done more to protect Mrs B. NatWest has a responsibility to monitor accounts and payments, and one of the reasons for this is to prevent fraud and scams. NatWest needs to have systems in place to look out for unusual transactions or other signs that might indicate its consumers are at risk of fraud (amongst other things).

With that in mind, I've considered whether NatWest should have considered these payments as being so unusual or uncharacteristic that it ought to have given the bank sufficient grounds for suspecting fraud.

Having done so, I am satisfied the account movements and transactions were highly unusual and not in keeping with the usual expenditure the account. I also think the timing and nature of the transactions should've alerted NatWest to the possibility of fraud. As such, I think it is reasonable to conclude that this activity ought to have triggered NatWest's fraud detection system. So, I think it would've been reasonable for NatWest to have contacted Mrs B and asked her to provide further details about the transactions, in particular the transaction at the takeaway shop.

Now I must also consider Mrs B's actions and her role in the events in question. Mrs B disagreed with the Investigator's recommendation, and she felt the full amount should be refunded to her account. I must highlight to Mrs B that under the relevant regulations – the Payment Services Regulations 2017, Mrs B is liable for transactions she has authorised – either by carrying them out herself or giving permission for another party to carry them out on her behalf. I understand Mrs B says she didn't consent to these particular transactions. However, the PSRs 2017 also set out that where a payment isn't authorised by the account holder, they may still be liable for it if they've failed with intent or gross negligence to adhere to the terms of their account or keep their personalised security credentials safe. This is particularly relevant to Mrs B's case as she has confirmed her card and credentials were disclosed to her son.

Mrs B says her son claims her debit card was taken by the cash point and he wasn't able to carry out any withdrawals. I've considered this, but NatWest has confirmed no reported issues with the terminal used and Mrs B's son's account of events doesn't show how the PIN, which was used for all the disputed transactions, would've been compromised.

Overall, having considered everything, all of the available evidence points to it being more likely than not that Mrs B provided authority for the transaction and should bear some liability for the losses she has incurred. I realise that this is not the outcome Mrs B was hoping for, and she will be disappointed by the decision I've reached. I hope that it helps Mrs B to know that someone impartial and independent has looked into her concerns.

Putting things right

I direct National Westminster Bank Plc to refund 50% of the transactions Mrs B has disputed as it failed to adequately safeguard her account.

My final decision

For the reasons given above, I uphold this complaint and require National Westminster Bank Plc to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 26 March 2024.

Chandni Green
Ombudsman