DRN-4707429

The complaint

Mr B has complained that National Westminster Bank Plc (NatWest) won't refund transactions he says he didn't make or otherwise authorise.

What happened

Between April and August 2023, Mr B's NatWest account was occasionally used for gambling payments, made across two different cards and authenticated using two different phones of his. This was funded by transfers from his savings after receiving payments he was expecting. The total was over £15,000.

Mr B reported some of the payments in May 2023, and the bulk in October 2023. He confirmed he had not lost any ID which could be used to set up the gambling accounts. He confirmed his other spending was genuine. He said a friend was temporarily staying with him at the time, he'd let the friend use his phone in front of him for some other payments, and his passcode was easy to guess. He accused the friend of making the gambling payments behind his back. He said he lost his first phone and replaced it with a second, but he didn't have any evidence of this. He said the gambling merchants had confirmed the accounts weren't his, but he couldn't provide any evidence of this. And when he phoned one of the merchants while on a recorded call with NatWest, the merchant confirmed the gambling account in question was in Mr B's name.

NatWest held Mr B liable for the payments in dispute, as they'd been made across two different cards, and were verified by Mr B's biometrics on his device at his usual IP address. They'd also sent Mr B texts, where he'd replied to confirm the payments as genuine. They noted the large gap between payments, and that Mr B had been regularly using his online banking for genuine spending between disputed payments, and would have repeatedly seen the disputed spending at the time. But he didn't report it until much later.

Our investigator looked into things independently and didn't uphold the complaint. Mr B didn't agree. He said his device was cloned, the number on the account wasn't his and he never got NatWest's texts, he never registered his biometrics, and he wanted us to investigate the merchants. The complaint's been passed 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.

I should first explain that our service only has jurisdiction over financial businesses, like NatWest. And the complaint I'm considering is against NatWest, not anyone else. I cannot investigate the merchants in the way Mr B might like, nor do I have the power to consider the dispute between Mr B and the merchants. Instead, I will keep my decision focused on the dispute between Mr B and NatWest.

Broadly speaking, NatWest can hold Mr B liable for the payments in dispute if the evidence suggests that he authorised them.

I'm satisfied from NatWest's technical evidence that the payments in dispute used Mr B's genuine app, on his registered devices, using his correct security details. I have not found that any "cloned" device was used. So I can see that these transactions were properly authenticated. The question, then, is whether the evidence suggests that it's most likely Mr B consented to the transactions, or not.

As mentioned, the transactions were all made on Mr B's two registered devices. While Mr B now says he lost one of them in March 2023, he did not tell NatWest this at the time, he didn't have any evidence of reporting it lost or replacing it, and I can see that he continued to use that device for genuine, undisputed spending of his long after March 2023, as well as the new device. The disputed transactions were also made on the same IP address which Mr B used for his genuine spending, which seems to be his home internet connection.

Mr B suggested that the transactions were done by a friend who was staying with him, and I have thought carefully about this possibility. It would have been difficult for the friend to have repeatedly taken Mr B's phone from him, learned each separate card's full details, learned his phone's passcode, learned all his online banking details, and been able to give Mr B's phone back to him, again and again, without Mr B ever noticing.

However, even if I accept that that was technically possible, it's important to note that many of the disputed payments were verified using Mr B's registered biometrics. Mr B now says he didn't use biometrics. But he previously confirmed that he did. And I can see that he did, as he registered his biometrics at the same time he registered each phone, and he frequently used his biometrics to verify his own genuine, undisputed activity. It is not likely or plausible that his friend was able to use Mr B's fingers (or his face for live facial recognition) without Mr B's consent and without him noticing.

The disputed transactions were funded by payments which Mr B was expecting, and by transfers from his savings accounts – which were also properly authenticated on his devices, at his IP address. Notably, some of the disputed payments were made within just minutes of Mr B's own genuine, undisputed payments to his usual payees. It is not likely or plausible that his friend would be able to repeatedly happen to take Mr B's phone when a payment had just come in, use it, then give it back to Mr B without him noticing just in time for Mr B to make his own payments right after. It's much more likely that the disputed payments were authorised, just like the other payments Mr B made at around the same time.

It's also difficult to see why the friend would use Mr B's phone for this purpose. As a matter of policy, those gambling websites only allowed profits to be paid back to the same place the deposits came from. So any winnings would go straight back to Mr B. It would not have been possible for the friend to profit themselves. So they'd need to have put in a huge amount of effort to do this, at severe risk to themselves, all for no benefit. That's not likely.

While Mr B says the merchants confirmed that the gambling accounts were not his, he did not provide any evidence of this. He forwarded us an email from one merchant, but that only confirmed that Mr B had reported the deposits to them and blocked the payment method. They did not confirm that they agreed the payments were fraudulent, and they did not offer to refund them. They just told Mr B to go to his bank or the police. And when Mr B phoned one of the merchants while on a recorded call with NatWest, he gave them his name, post code, and email, and they in fact confirmed that the account in question was in his details. Mr B now says that that merchant said his date of birth didn't match. But I've listened to the recording of his call with NatWest, from the start until he said bye and the line disconnected, and nothing was said about the date of birth.

Notably, Mr B was sent text messages from NatWest about his spending at the time, and I can see that they received replies from him which confirmed later-disputed spending as genuine. Mr B now says that the number NatWest had on file was not his, and that he didn't get those texts. However, the number NatWest had on file was the one he gave them. And I can see that it was Mr B's genuine number because he received many one-time passcodes at his registered number over 2023, and he repeatedly used those one-time passcodes for genuine, undisputed activity of his. NatWest also phoned him at his registered number in June 2023 and successfully spoke to him about a genuine payment to his landlord. I'm satisfied that that was a genuine phone number of Mr B's at the time.

I can see that over the period the disputed payments were being made, Mr B frequently checked his online banking, looked at his accounts, and carried out his normal genuine spending. So he would have seen the disputed payments at the time, or at least seen that his balance was many thousands of pounds smaller than it was before. Indeed, he had to make further withdrawals from his savings to then fund his normal spending. Yet he didn't report the bulk of the disputed payments until October 2023, half a year after the disputed payments started. It is not likely Mr B would wait so long to report the disputed payments if they were made without his consent. But it would make sense if they were authorised.

Lastly, I've not seen any evidence which makes it seem implausible or unlikely that Mr B could've authorised these payments or given someone else permission to make them.

In summary, the disputed payments were properly authenticated on Mr B's genuine devices, on his internet connection, using his security details and registered biometrics. They were funded by payments Mr B was expecting, and by authenticated transfers from his savings. No one but Mr B reasonably stood to profit from the resulting gambling. There is no evidence which substantiates that these were not Mr B's gambling accounts, and one merchant confirmed that their account was in his details. NatWest texted Mr B about the transactions at the time, on the same number he used to speak to them and to verify his other spending, and he replied to confirm them as genuine. Mr B was reasonably aware of the payments and his balance at the time, but chose not to report anything was wrong until much later. And I'm afraid I do need to note that Mr B's testimony has been inconsistent, and often contradicted by the objective evidence at hand. There's no likely or plausible way that the payments were made without Mr B's consent, and the only likely possibility remaining is that the transactions were authorised.

So based on everything I've seen, I think it's fair for NatWest to decline a refund in this case. I do appreciate that this will not be outcome Mr B was hoping for. But given the evidence at hand and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

My final decision

For the reasons I've explained, I do not uphold Mr B's complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 June 2024.

Adam Charles
Ombudsman