

The complaint

Mr T complains because National Westminster Bank Plc refused to refund gambling transactions which he says he didn't authorise.

What happened

In September 2018 Mr T contacted NatWest to query multiple gambling transactions on his account which he says he didn't authorise.

NatWest reviewed Mr T's comments and explained it had contacted Mr T in July 2018 about the transactions on his account for gambling and Mr T didn't raise any concerns at this point. Mr T contacted NatWest again in January 2019 and explained a family member, who I will refer to as S, had been using his account to make these transactions. NatWest explained Mr T could raise a fraud claim at this stage, but no further information was provided.

Mr T raised a formal complaint in December 2022, and NatWest issued a final response letter explaining it wouldn't be refunding the transactions for gambling on the account and any associated charges. It said this was because Mr T had been sent statements for the account and had continued to make payments towards the balance, so he was aware of the spending on the account. It also explained that gambling is a lifestyle choice, and unless it had other concerns it wouldn't intervene with this type of account activity.

Mr T remained unhappy and referred his complaint to our service. An Investigator reviewed Mr T's concerns and didn't think NatWest had acted unfairly as Mr T knew about the transactions on his account and had given authority for them.

Mr T disagreed, explaining the gambling had been on the account for many months before NatWest contacted him about them. Mr T asked for his complaint to be reviewed by an ombudsman.

I issued my provisional decision on 14 May 2024.

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.

NatWest responded to my provisional decision explaining it accepted my recommendations. Mr T did not respond to the provisional decision. The deadline has now passed, and as no further substantive issues have been raised, my provisional decision remains unchanged. I include my provisional findings below.

Provisional decision

What I've provisionally 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.

After considering all the available evidence, I currently intend to uphold Mr T's complaint. I'll explain why.

Firstly, I believe there is no dispute that Mr T's family member S carried out the gambling transactions on Mr T's account. Mr T has provided details about his personal and family situation at the time, and I appreciate Mr T's willingness to share such difficult details. Mr T says he didn't know S had obtained access to his card and account details to carry out the gambling transactions.

As the funds used were credit I must consider the Consumer Credit Act 1974 as it outlines consumer liability for unauthorised transactions using a credit facility. Section 83 and 84 of the CCA essentially explain a consumer won't be liable for an unauthorised payment using the credit facility. Gross negligence isn't a consideration with the use of credit.

I've considered the relevant law alongside Mr T comments. Although I can't know for certain how S obtained Mr T's card and account details, I think his account of events is plausible, and Mr T has provided consistent and detailed testimony about his circumstances at the time. The statements provided show that from March 2018 onwards there is a significant change in the activity on Mr T's account. There are numerous payments to gambling websites and prior to this, Mr T's statements don't show any signs of compulsive gambling.

NatWest's records also show it attempted to contact Mr T multiple times regarding the spending on the account, but it was unable to reach him. The technical data shows numerous transactions being blocked and flexi-blocks were applied to the account during this period. It appears NatWest's internal fraud prevention system picked up on the change in activity on the account and shift towards excessive online gambling. The evidence shows there was an obvious change in account usage which is supported by Mr T's comments about the situation with S.

NatWest explained that during this period Mr T was paying the minimum balance towards the account, which suggests a level of awareness of the spending on the account. But Mr T says S hid the statements from him and he wasn't aware of the nature of the spending on the account. In July 2018 when NatWest spoke to Mr T, he queried the spending on the account for gambling and the notes from the time show Mr T asked for statements for this period to be resent. Based on Mr T's comments about his family circumstances I'm satisfied he wasn't aware of the spending on gambling, and he hadn't given his authority for them to be carried out.

The account terms and conditions also read: 'If a card is misused before you report its loss or theft, or that someone else knows the Security Details, you will only have to pay up to £35 for any misuse. But if the card is misused by someone, who has it with your permission, you will have to pay for all transactions. Once you have given notice of loss, theft or possible misuse, we will cancel the card and you will not be liable for any further transactions.' This means Mr T should only be liable for up to £35 as I'm satisfied the evidence supports his position that it was used without his permission. NatWest has explained Mr T should've taken steps from July 2018 onwards to stop S using his account. However, the key consideration here is whether Mr T had given his consent for the transactions in question, and as outlined above, the evidence suggests he hadn't and the terms of the account limit Mr T's liability once there is notice of possible misuse.

I can also see the terms state NatWest may end or restrict the account: 'if we believe there has been fraud on your account or it is at risk of someone using it to make a fraudulent or unauthorised transaction;' Looking at the statements and technical data provided by NatWest I can't see that it took any effective action to protect the account. Given the significant change in spending on the account, alongside the conversations it had with Mr T in July 2018, I would've expected NatWest to have taken steps to restrict the gambling activity on the account and limit its potential losses.

I have not seen enough evidence to persuade me that Mr T acted fraudulently, or that he allowed S to make the gambling payments. It follows that these payments should therefore be treated as unauthorised and, as per the relevant law and the terms of Mr T's account NatWest is therefore not able to hold him liable for them.

Putting things right

For the reasons outlined above I uphold this complaint and direct National Westminster Bank Plc to put things right.

NatWest has confirmed the account has now closed, and Mr T's comments suggest he has continued to pay towards the debt he owed. NatWest should clearly establish the status of the account, and if the debt has been passed to recoveries or sold on to a third party, it should work with them or take back the debt to ensure it can do the following:

- Refund the disputed gambling payments in full to Mr T. These begin in March 2018 and end in October 2018.
- NatWest can hold Mr T liable for £35 under the terms of the account. If it decides to do so, it must inform Mr T of this deduction.
- Rework Mr T's account and refund any interest and charges, along with amending his credit report to remove any negative reporting, caused by the transactions.
- From the point the credit was repaid by Mr T for the gambling, NatWest should pay 8% simple interest on each repayment from the date of the repayment until the date of the refund.†

† HM Revenue & Customs requires NatWest to take off tax from this simple interest. NatWest must give Mr T a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons above, I uphold this complaint. National Westminster Bank Plc must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 2 July 2024.

Chandni Green
Ombudsman