

The complaint

Mr L complains that National Westminster Bank Plc has declined to refund payments he says he didn't make or allow anyone else to make. Mr L is also unhappy with the level of customer service that he's received and says he's been discriminated against.

What happened

Mr L is disputing 42 payments made from his account with NatWest between October and December 2023 – totalling over £4,300.

The payments were card present transactions, with most involving the card's chip being read and Mr L's PIN being correctly entered. Mr L thinks that someone he knows must have taken his card, used it to make the payments in dispute, and replaced it without his knowledge.

Mr L has explained that he is disabled and has shared information around several medical conditions that he has been diagnosed with which affect his mobility and memory amongst other things. Mr L says these make him more vulnerable to being defrauded.

NatWest declined Mr L's claim on the basis that he hadn't kept his card and PIN safe.

Mr L complained, in summary he said that NatWest had:

- Unfairly declined his claim and failed to consider his disabilities.
- Discriminated against him by expecting him to keep his card locked away.
- Sent him information in relation to gambling and suicide support, which he found inappropriate and offensive.
- Provided poor customer service, including a significant amount of time spent on the phone with cold transfers and rude staff.
- Failed to provide him with sufficient advice or offer appropriate adjustments following his previous fraud claim to safeguard him against further fraud.

When Mr L complained to our service, the investigator didn't uphold the complaint. In summary they said that on balance they thought the payments were more likely than not authorised by Mr L. And they didn't make an award in relation to Mr L's concerns about discrimination and customer service.

Mr L didn't agree and so the matter was passed to me for consideration by an ombudsman. I issued my provisional decision on 30 September 2024 – here I explained why I didn't think it would be fair to require NatWest to reimburse the disputed transactions in the circumstances. But I did say NatWest should pay Mr L £250 compensation for impact on him of it failing to appropriately consider what reasonable adjustments or tailored advice he may need to best access his account and protect himself from fraud.

NatWest accepted my provisional decision, but Mr L didn't agree. In summary Mr L reiterated some points he'd made previously and said that he wanted more of an explanation for why I wasn't persuaded the disputed payments were unauthorised.

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, including Mr L's response to my provisional decision, I am upholding this complaint in part.

Should NatWest reimburse the disputed payments?

The starting point in law is that Mr L is liable for payments that he authorised, and that NatWest should reimburse unauthorised payments. Where the payments are deemed to have been unauthorised, there are certain circumstances in which NatWest can still hold Mr L liable – for example, if Mr L failed with gross negligence to keep his secure information safe. This is the basis on which NatWest has declined Mr L's claim.

Based on the information provided, I don't think it would be fair to require NatWest to reimburse Mr L for the disputed payments. This is because I'm not persuaded that the transactions were unauthorised or that Mr L hasn't benefited from the funds.

I accept that it's possible Mr L doesn't remember making or allowing someone else to make the payments - particularly given the prevalence of cash withdrawals which might be more difficult to recall the purpose of after time has passed.

I can't know for certain what happened, but my role is to make a finding on what I consider more likely than not to have happened on the balance of probabilities by weighing up the information available. Having done so, I've reached this conclusion for the following reasons:

- Mr L is disputing 42 card payments – of these, 36 involved his physical card's chip being read and his PIN being entered correctly. The remaining payments were contactless card payments. So, I'm satisfied it was Mr L's genuine card and secure information (where applicable) that were used to make the payments.
- There are multiple undisputed card payments during the relevant time period (October – December 2023) and so if Mr L's card had been taken and replaced without his knowledge, this would have needed to happen on over 10 occasions.
- Mr L says he didn't notice his card missing at any point over the period in question. I appreciate Mr L has explained he kept his card in a bag on his wheelchair and that he wouldn't have seen someone accessing it. But some of the payments took place late at night when he says he would have been home – suggesting his card would need to have been missing overnight on multiple occasions without Mr L noticing. So, while Mr L has provided an explanation for how this could be possible, and why he's more vulnerable to fraud, I'm not persuaded this is what most likely happened in the circumstances.
- Most of the merchants or ATMs had been used for undisputed payments. Having asked Mr L, it remains unclear how he has identified which payments were and weren't authorised by him. Some of the disputed payments were to Pay Point which Mr L says he doesn't use to pay bills, but this isn't the only service it provides.
- Given that Mr L is disputing over £4,300 – of which more than £2,000 took place before he won £5,000 (on what he describes as a raffle) on 27 December 2023. I would have expected the account balance to be significantly lower than in previous months. However, prior to this one-off receipt, Mr L's average balance was similar during October – December 2023 to previous quarters that year. There doesn't appear to be an explanation for this as Mr L isn't disputing any credits to the account or described making any adjustments to his outgoings as a result of the fraud that he says he was unaware of.

- Mr L has described issues with his memory and explained he forgets daily things like when he last did something or conversations he's had. He explained he thinks this is linked to his bipolar disorder. He has also told us he has progressive supranuclear palsy which can affect memory.
- Given that Mr L has described needing assistance to leave his home and therefore he is not normally alone when making purchases or withdrawals, I accept it is possible that someone trusted could have seen him enter his PIN and then taken his card to use before replacing it. But for the reasons explained above, I'm not persuaded this is the more likely explanation of what happened for all the disputed payments. And as I'm not persuaded that all the disputed payments were unauthorised, I have no way of distinguishing which payments Mr L did or didn't agree to or benefit from.
- I've also considered the possibility that Mr L is the victim of financial abuse given the vulnerabilities he has described and that he suspects a group of people he now believes were posing as friends of being involved. He's also let us know he needs assistance when accessing his online banking. But for similar reasons described above, I can't fairly require NatWest to reimburse the payments without being able to establish which payments he did and didn't receive a benefit from.

Has NatWest done enough to support Mr L and provided appropriate levels of customer service?

Mr L has let us know about his disabilities and mental health conditions which he's explained make him more vulnerable to being the victim of fraud. He raised a claim earlier that year to dispute payments he believed his carer at the time had made without his consent. He says NatWest ought to have done more to educate him on how to protect himself. The information he was given at the time was too generic and not sufficient in the circumstances. Mr L also says that rather than supporting him, NatWest has applied a higher expectation for him in terms of the steps he should take to protect himself, and that he thinks this is discrimination.

NatWest's call notes from 16 October 2023 say that Mr L would arrange for his money to go into his mother's account who would then give him cash each week and keep hold of his card at her house. Mr L says this plan changed when his mother became unwell, but I'm not aware that he informed NatWest of this at the time.

It isn't our role to make a finding under the Equality Act, but I have taken it into account as relevant law. And I don't think that NatWest did enough to understand Mr L's different conditions or establish what adjustments would be reasonable and how to best support him on how to access and protect his money. Mr L has described having a number of disabilities and other conditions which make him more vulnerable to fraud, and NatWest has not provided evidence that it undertook a suitable review of his circumstances or that it went through his options with him. While this may not have prevented the payments Mr L is disputing from taking place, it likely would have reduced the stress and confusion that Mr L has experienced. NatWest also gave Mr L contradictory information about what restrictions it could place on his account to prevent fraud. So, I think it would be fair for NatWest to pay Mr L £250 compensation for the trouble and upset he has gone through.

I've also considered Mr L's other concerns, such as when NatWest suggested he should have done more to keep his card safe. I agree it wasn't helpful or practical advice to say he should have locked his card away at home in the circumstances. In a situation when a customer has been the victim of fraud multiple times, we'd expect a bank to provide advice on how to protect themselves. But NatWest ought to have tailored this advice. Mr L has described the steps he's taken to protect himself and has since found it helpful to use a virtual card as offered by a different provider – it's disappointing that NatWest didn't explore all available options to assist Mr L. However, I note that we are not a regulator, and it isn't

our role to penalise businesses.

I understand Mr L was offended by the implication he might be suicidal, but I don't think NatWest has done something wrong by sharing information about the support available given he had raised wellbeing issues. I note that NatWest has apologised for sharing information about gambling support and I think this sufficient in the circumstances.

I'm aware I haven't listed every customer service concern that Mr L has raised, but I have reviewed everything and considered this as a whole. NatWest has apologised about the time Mr L spent on phone with it in relation to his fraud claim. I do appreciate why Mr L would have wanted his claim to progress quickly but I think it is relevant that he called NatWest multiple times before the timeframes it had set out about when it would next be in contact had passed. So, although I realise that contact meant Mr L needed to repeat what had happened to different members of staff, I don't think it'd be fair to say NatWest did something wrong here. I've also listened to the calls between NatWest and Mr L, and while I can see some conversations weren't always productive, I don't think NatWest staff were inappropriate or unprofessional to the extent that an additional award would be appropriate in the circumstances.

My final decision

For the reasons explained, my final decision is that National Westminster Bank Plc should pay Mr L £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 November 2024.

Stephanie Mitchell
Ombudsman