

complaint

Mr D complains that National Westminster Bank Plc is seeking repayment of a debt he says arose when transactions were made on his account without his knowledge. Mr D says he found out someone had used his account to deposit cheques, transfer and withdraw money. The cheques were returned unpaid, leaving his account overdrawn. National Westminster believes it's entitled to seek repayment from Mr D. The bank doesn't accept Mr D has been a victim of fraud by an unknown third party through no fault of his own.

our initial conclusions

Our adjudicator noted Mr D had said he'd lost his card, though he didn't notify the bank for some time. Mr D's PIN¹ was entered correctly when some of the money was withdrawn. He'd said he didn't keep a record of the PIN, and shredded security details. Yet Mr D's online banking facility was accessed several times to undertake the disputed activity. Those actions required knowledge of Mr D's security, not just access to his card. The adjudicator wasn't persuaded Mr D hadn't authorised the use of his details. Mr D maintains he knew nothing about the activity, that the bank's procedures aren't sufficiently robust, and that he may have been a victim of hacking.

my final decision

To decide what's fair and reasonable in this complaint, I've considered everything Mr D and National Westminster have provided. Where there's a dispute about what happened, I've based my decision on what I consider most likely to have happened in the light of the evidence. Having done so, I've reached a similar conclusion to the adjudicator.

I haven't seen any persuasive evidence that leads me conclude Mr D's online banking facility was accessed by a fraudster who had either found or taken Mr D's card without him knowing². Having the card doesn't explain how the person knew Mr D's security details, including his PIN. Based on what I've seen, I don't think the most likely explanation is that Mr D's account was used without his knowledge. I'm aware bank customers are sometimes approached by third parties and allow them to use their account facilities in return for payment. I think this might well be an explanation for what's happened here – the circumstances certainly bear some known hallmarks of this type of fraud. Having reviewed the bank's investigation, on balance, I find it's done enough to show it's entitled to seek repayment of the outstanding balance from Mr D.

For the reasons I've explained here, my final decision is that I do not uphold Mr D's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D either to accept or reject my decision before 9 January 2015.

Niall Taylor

ombudsman at the Financial Ombudsman Service

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

ombudsman notes

¹ PIN - Personal Identification Number.

² Although Mr D has suggested his laptop was hacked, he doesn't seem to have mentioned this to us or the bank until after the adjudicator issued her assessment. I've seen no evidence to substantiate Mr D's assertion. And that still doesn't explain how such a party would have had access to Mr D's card, or indeed his PIN.

Mr D has mentioned his concern that information recorded by National Westminster might be causing him difficulty in obtaining an account elsewhere. But it's not generally wrong for a bank to share information relating to account misuse. In light of my findings, I'm not minded to require National Westminster to remove or amend any information it might have recorded in this respect.

what is a final decision?

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

what happens next?

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer should sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.