

Complaint

Mr G complains that National Westminster Bank Plc will not refund him £1500 disputed transactions taken from his account. And they've also have closed his account without giving any reason. He would like his money refunded and the account reinstated.

Background

Mr G had an account with NatWest.

Sometime in 2018 Mr G lost his bank card. Between April and September 2018, he didn't use his card.

In September 2018 Mr G ordered a new card and PIN. The bank says the card and PIN were dispatched separately by first class post to his home address on the 20 and 21 September 2018. Mr G says the card never arrived at his house. He said he had previously had issues with not receiving post, so he didn't think anything more of it.

On 24 September 2018 Mr G received £1500 into his account. He says this money was lent to him by a friend as he was in financial difficulties.

Following this deposit into his account the money was withdrawn via cash machines during the early hours at cash machines on the 24, 25 and 26 September 2018. Each time £500 was withdrawn from the cash machine.

Mr G said he became aware of the disputed ATM withdrawals when he received a text from the bank saying his account balance was zero.

Mr G contacted the bank by phone on the 27 September 2018 to report the fraud. As he hadn't received the card sent by the bank on the 21 September that card was marked as stolen.

The bank investigated the fraud and decided they wouldn't refund the money. They also gave Mr G 14 days' notice to close his account.

Mr G raised a complaint and asked the bank to reconsider their decision. NatWest confirmed they would not be refunding Mr G and the account would close after 14 days.

Mr G was unhappy with NatWest's response, so he referred the matter to our service.

Our investigator looked into his complaint. She said NatWest had acted fairly in not refunding Mr G. She thought it was likely Mr G or someone known to him had authorised the transactions because a third party wouldn't have known the money was coming into the account and when. She thought an unknown third party would have needed to know a new card and PIN was due to arrive and been able to intercept the post on two occasions. The disputed transactions took place in the evening and it would be unlikely a third party would wait until the evening to use a card and PIN they had intercepted earlier in the day.

As Mr G didn't agree with the investigator's view the matter has come to me for decision.

My provisional decision

In my provisional decision I said:

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 I am minded to reach a similar conclusion as that reached by the investigator but I wanted to expand on the reasons and address Mr G's complaint regarding the closure of his account.

Generally, NatWest can hold Mr G liable for the disputed transactions if the evidence suggests it's more likely than not, he made or authorised them himself.

I am satisfied from the bank's technical evidence Mr G's genuine card and PIN were used to make the disputed transactions. But the regulations relevant to this case say that is not, on its own enough to enable NatWest to hold Mr G liable. So, I also need to think about whether the evidence suggests it's more likely than not Mr G consented to the withdrawals being made.

From what I've seen, I don't think it's unreasonable for NatWest to conclude Mr G authorised the transactions. I say this because:

- *Mr G ordered a new card and PIN which was dispatched on 20 and 21 September 2018. Mr G has said he didn't receive the card or PIN. He has told us he lives at home with his mother and younger sister and no one else visits the home. The post box used in his flat is not communal. Although Mr G has said post goes missing all the time, given what he has told us about his living arrangements, I think it's unlikely a third-party fraudster was able to intercept Mr G's post on two separate occasions to get the new card and PIN. Mr G hasn't given us a plausible explanation as to how the Card and PIN were intercepted.*
- *Mr G has said he was in financial difficulties, so it seems surprising he wasn't more concerned about his card and PIN not arriving especially as he was expecting a large payment into the account.*
- *Mr G has said he doesn't use the account much and I have seen evidence to show he carried out very few transactions in the account from April 2018. He also said he had misplaced his card at that point. Given this, it's unfortunate that an unknown fraudster would choose the day a large payment was going to be deposited into his account to carry out this fraud.*
- *The payment into the account came in on 24 September at 2.30 am. The first withdrawal was at 11.51 pm that evening. If the post had been intercepted by a third party as Mr G suggests, I find it unlikely the fraudster would wait to withdraw the money until very late in the evening when they had the card and PIN available earlier in the day. As it would risk Mr G having spent the money or moving it to another account.*
- *I also think it's unlikely a fraudster having intercepted the card and PIN wouldn't immediately carry out a balance enquiry on the account to check the funds available. The evidence shows the first balance enquiry was on 24 September at 11.50.45 pm, 25 seconds before the first withdrawal of £500.*

- *The balance was checked four times on 26 September before the last £500 was taken out at 2.37 am. The balance enquiries are at different ATM machines. I don't think a fraudster would delay taking money out once they had checked the balance and go to a different cash machine to check the balance again and then withdraw the money.*

Based on everything I've seen I think it's fair and reasonable for NatWest to refuse to refund the disputed cash withdrawals because overall, I think it's more likely than not Mr G made the transactions he disputes.

Account closure

Mr G received a letter from NatWest on 29 September 2018 giving him 14 days' notice of the closure of his account.

A bank is entitled to close an account with a customer just as a customer may close an account with a bank. But before a bank closes an account, it must do so in a way, which complies with the terms and conditions of the account.

The terms and conditions of Mr G's account say NatWest could close the account with immediate effect in certain circumstances. The terms and conditions say:

7.1 Closure by us

7.1.1 We can close your account immediately if:

- (a) *we reasonably suspect that you have given us false information;*
- (b) *we reasonably suspect that your account is being used for an illegal purpose;*
- (c) *you behave in a threatening or violent manner towards our staff; or*
- (d) *you were not entitled to open your account.*

7.1.2 We can also close your account by giving you not less than 60 days' notice before we close your account.

Looking at the evidence provided by NatWest I am satisfied they were following the terms and conditions to close the account with immediate effect.

Whilst Mr G may've expected to be given the reasons for the closure, NatWest isn't required to give him a specific reason for closing the account. So, I can't say NatWest has done anything wrong by not giving Mr G this information – as much as he'd like to know.

I realise this will be disappointing to Mr G and I understand the closure of Mr G's account caused him inconvenience. But the bank can make commercial decisions about who it offers banking services to. They can't unfairly discriminate against a customer. But they can decide they no longer wish to do business with individuals. That's because they have the commercial freedom to decide who'd they like to contract with. And I'm satisfied that in Mr G's case NatWest exercised its commercial freedom legitimately when it decided to close his accounts. So, I can't fairly and reasonably say NatWest have done anything wrong here.

In summary looking at the evidence I find it more likely than not Mr G made the transactions he disputes. I have gone on to consider NatWest's closure of Mr G's account and I am

satisfied NatWest acted fairly when they decided to close the account. It follows I will not be asking NatWest to do anything.

So subject to any further representations from Mr G and NatWest I was minded to reject the complaint.

Responses to my provisional decision

Neither Mr G nor NatWest have made any further comments to my provisional decision.

My findings

Although Mr G and NatWest have not provided any further comments, I have nevertheless re-considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have seen nothing to change my mind and so my provisional findings stand.

My final decision

My decision is that I reject the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 September 2020.

Esperanza Fuentes
ombudsman