

complaint

Mr W has complained that Nationwide Building Society closed his account and refused to refund unauthorised transactions.

background

In June 2016, Mr W opened an account with an online casino. He played frequently between June and October. And he won handsomely on a few occasions. He used his Visa card and MasterCard to make deposits into his casino account.

At the end of October, he reported four payments to Nationwide as suspicious. He said he didn't make them. He believed a malware attack on his computer was responsible for the payments.

He asked Nationwide to claim the money back from the casino under the chargeback scheme.

Nationwide said it couldn't raise a chargeback because the disputed transactions were made under the 'Verified by Visa' scheme.

It also didn't think a malware attack was to blame for the transactions. It said the IP address used to make the disputed transactions matched the IP address, which he'd used to check his online banking. And it said the casino confirmed the transactions were genuine. The casino also told Nationwide that Mr W had benefited from some of the disputed payments by withdrawing winnings.

For these reasons, Nationwide refused to refund him and it subsequently closed his account. But it acknowledged its communications had been poor and so offered him £50 as a gesture of goodwill.

Mr W wasn't happy with this outcome and so he brought his complaint to this service.

Our adjudicator didn't think Nationwide had done anything wrong or treated him unfairly. She said she couldn't see how a malware author would benefit from the fraud since any winnings would be deposited in Mr W's account. And she said Nationwide's decision to close his account was a business decision, which it was entitled to take.

Mr W disagreed with our adjudicator's view. He's no longer disputing the transactions from which he benefited. But he maintains there were four payments he didn't authorise. He says Nationwide must refund him under industry codes and regulations. And he's said its decision to close his account was punitive and caused him stress.

He's asked for an ombudsman's final decision.

my findings

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'm afraid I agree with our adjudicator's view and for broadly the same reasons.

Nationwide can't raise a chargeback because the rules prevent it from asking a supplier to pay back money where a payment was made under the verified by visa scheme. It seems Mr W has accepted this. And as the rules prevent a chargeback claim I can't ask Nationwide to raise one.

His main complaint now is that the transactions were unauthorised. And he says Nationwide is obliged to refund unauthorised transactions under the relevant industry codes and regulations.

Mr W has clearly spent a lot of time researching the codes and regulations but I'm afraid he's allowed them to sidetrack him. That's because the key issue here is whether the transactions were 'authorised'. The codes and regulations can't help me to answer that question. I have to look at the factual evidence.

He says his computer was attacked by a malware. He's sent us his antivirus log. It shows his computer system detected malicious software on 30 October 2016. The log doesn't tell me if this was a random attack or a targeted one by a fraudster.

Nationwide said it's possible a malware was on his computer but it doesn't consider the malware would compromise all of his information such as name, address, date of birth, e-mail and telephone numbers.

Unfortunately, there's no direct evidence linking the malware to the disputed transactions. And it doesn't help Mr W that the antivirus log also shows that an earlier malware was detected on 12 September but it didn't affect any accounts. This demonstrates a malware can exist without causing harm. So, I'm afraid there isn't enough evidence for me to say the malicious software was to blame.

What's more, the factual evidence shows it's more likely than not that Mr W authorised the transactions. The evidence shows:

- **the same IP address was used** - the payments to the casino were made from an IP address that matched the IP address used to check Mr W's online banking. So I can assume the disputed transactions were made from his computer. I appreciate he doesn't deny this. He blames malicious software.
- **this was unusual behaviour for a fraudster** - there were only four disputed transactions and they were made to an account Mr W had with an online casino. This is unusual behaviour for a fraudster, if a fraudster was behind this. A fraudster, with access to an account, is more likely to spend the money or transfer it to another account.
- **there was no obvious benefit for a fraudster** since the winnings are paid into Mr W's casino account.
- **a consistent pattern of play** – the casino said the disputed transactions were consistent with Mr W's normal pattern of play.
- **another genuine payment** -there was a genuine payment to another online gambling site on the same day as the disputed transactions. Mr W hasn't disputed this payment. It seems unusual for the malware to leave other accounts unaffected

I also noticed that two of the disputed transactions were for unusually high sums. I think it's possible Mr W realised he'd overspent and was trying to recover his money - initially under the chargeback scheme.

Based on this evidence, I think it was reasonable for Santander to treat the disputed transactions as authorised. I won't be asking it to refund Mr W.

As for closing his account, this was, ultimately, a business decision for Nationwide and I can't ask it to reinstate his account. Besides, it gave him one month's notice of the closure. Under its terms and conditions, it can close an account immediately in exceptional circumstances. I appreciate its decision caused him stress but I don't think its actions were punitive or unfair.

I'm sorry this will be disappointing news for Mr W but I hope the reasons for my decision are clear.

my final decision

My final decision is I won't be asking Nationwide Building Society to do anything.

Its offer of £50 remains open to Mr W to accept.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 August 2017.

Razia Karim
ombudsman