

Complaint

Mr M complains that as a result of a fraudulent cheque being paid into his Nationwide Building Society account; he's being asked to pay a debt back made up of a series of disputed transactions he says he didn't make or otherwise authorise.

Mr M has been helped with his complaint by a representative, but for ease of reading, I'll refer to all submissions as having come from Mr M himself.

Background

On 8 March 2018 a cheque of £2,000 was paid into Mr M's account. At the time of the deposit Mr M's balance was £0.02.

On 14 March 2018, the following transactions were made from Mr M's account:

- An ATM withdrawal of £300 at 12:16am;
- An online banking transfer of £500 at 12:17am;
- An online banking transfer of £1,197 at 12:37am (this payment was subsequently reversed).

Following the third transaction, Nationwide applied blocks to Mr M's account. The cheque of £2,000 was returned as unpaid on 14 March 2018 (after the above transactions had taken place) due to it being counterfeit. This created a debt on Mr M's account of £799.98.

Mr M reported his card lost on 16 March 2018 and explained he didn't deposit a cheque into his account, or make the transactions listed on 14 March 2018. There were further conversations between Nationwide and Mr M.

Nationwide made the decision to keep the account blocks in place and hold Mr M liable for the debt caused by the disputed transactions.

In summary, Nationwide said:

- Mr M told Nationwide he lost his card on 5 March 2018, so Nationwide found it unusual that the card was not reported as lost until 16 March 2018. Nationwide found it odd given that prior to the disputed transactions Mr M used his card almost daily.
- Mr M told Nationwide he wrote his Personal Identification Number (PIN) down in a diary and his roommate had access to it.
- No attempts were made to use the funds from the cheque until it had gone through the clearing cycle.
- Mr M initially said he didn't have online banking and when Nationwide confirmed that Mr M successfully registered for online banking on 8 January 2018, he changed his story to confirm he did have online banking.
- There were no incorrect PIN or online banking attempts.
- A successful online banking login was made on 12 March 2018.
- Nationwide delayed sending Mr M a final response letter and £50 compensation was sent to Mr M by cheque to recognise this.
- Mr M was permitted to withdraw salary credits from a branch.

Mr M referred his complaint to this service.

One of our investigator's felt the complaint should be upheld in part. She thought Mr M either carried out the disputed transactions himself or authorised someone else to. But she didn't think Nationwide handled Mr M's request to access the undisputed funds in his account fairly. She suggested that Nationwide pay £200 in addition to the £50 already sent to him for the trouble and upset caused.

Nationwide didn't respond to the compensation suggestion. Mr M provided this additional information in response to our investigator's thoughts:

- He would have been at college at 3.24pm on 8 March 2018 – when the counterfeit cheque was deposited into his account and CCTV would show it wasn't him as he couldn't be in two places at once.
- The cheque being deposited ought to have been flagged as suspicious and the loss could have been prevented.
- Mr M has learning difficulties and when he first reported the card as lost, he got mixed up with the dates. He's sure he would have tried to use it on 12 March 2018 because he recalls it being four days before he was due to be paid.
- He did access his online banking on 12 March 2018.
- Mr M's PIN was not written in a diary and rather stored in his phone. The card may have been cloned and his online banking details compromised.

Our investigator maintained her initial thoughts and felt that Mr M would have at least seen the deposited cheque when he checked his online banking on 12 March 2018 and failed to report his card lost or stolen until 16 March 2018.

Mr M asked for the case to be passed to an ombudsman for review.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so, I've come to largely the same conclusions as our investigator and I'll explain why.

Generally, Nationwide can hold Mr M liable for the disputed withdrawals if the evidence suggests that it's more likely than not he made or authorised them himself.

I'm satisfied from Nationwide's technical evidence that Mr M's genuine card and PIN were used to deposit the counterfeit cheque and make the disputed transactions. But the regulations relevant to this case say that is not, on its own, enough to enable Nationwide to hold him liable. So I also need to think about whether the evidence suggests that it's more likely than not that Mr M consented to the transactions in dispute.

From what I've seen, I don't think it's unreasonable for Nationwide to conclude that Mr M authorised the transactions and as such, hold him responsible for the debt that accrued on his account following the reversal of the fraudulent cheque payment. This is because:

- The disputed transactions were carried out using Mr M's genuine card, PIN and online banking details but there's no convincing explanation for how a third party could have accessed Mr M's card, PIN and online banking information. Mr M has given conflicting information about when he last used his card. According to the audit trail I've seen from Nationwide the last chip and PIN transaction Mr M carried out – prior to the disputed transactions – was on the 5 March, three days prior to the

disputed cheque deposit. We know Mr M was in possession of his card on 8 March 2018 because he made a contactless purchase on this day which didn't require his PIN. I think it's unlikely that a fraudster observed Mr M enter his PIN on the 5 March 2018 and followed him for a period of time before they had the opportunity to access his card to use it on 8 March 2018.

- No transactions were attempted until the cheque became available to spend. So the person using the card would have known funds wouldn't be available until the cheque credit was available to draw on, almost a week later. There's no explanation as to why an unknown third party ought to have known that Mr M wouldn't receive any payments into the account during this time to have checked the balance after the date of the cheque being deposited. There's also no convincing explanation as to why an unknown third party would wait this period of time given the high possibility that Mr M would have noticed his card missing and reported it lost or stolen.
- Mr M has also given conflicting information about when he first noticed his card missing. I accept he may have mixed up the dates when he originally reported his card lost to Nationwide. Even if I accept that Mr M first realised his card was missing on 12 March 2018 and not 5 March 2018 (as first reported to Nationwide), he states he tried to use the card on 12 March 2018 and realised it was missing. Given that Mr M tends to use his card daily (when he has an available balance), he hadn't used his card the previous four days and I think this was because his available balance was £0.02. As Mr M says he recalls it being four days prior to receiving his wages, I'm unsure why Mr M would have tried to use his card prior to receiving his wages into his account given that he had relatively nil available balance. And given the almost daily reliance Mr M had on the use of his card, I don't think it's plausible that Mr M would have waited four more days to report this matter to Nationwide. I don't find Mr M's testimony to be plausible or persuasive on this point.
- I accept Mr M may not have noticed the cheque deposit when he checked his online banking on 12 March 2018.

I've noted Mr M's testimony that he was at college at the time the cheque was deposited into his account and felt CCTV would evidence that he didn't deposit the counterfeit cheque into his account.

It's possible that CCTV might have identified that someone other than Mr M made the deposit. But Mr M didn't have to make the deposit personally in order to be liable for the subsequent withdrawals under the relevant rules. He can still be held responsible for it if he authorised the use of his card. So even if CCTV had been available, looking at all of the evidence in this particular case, I don't think I could be as sure as I would need to be to say that Mr M wasn't involved.

Based on all the evidence I've seen and for the reasons I've explained, I think, on balance, Mr M more likely than not carried out the disputed transactions himself or authorised them. As I'm satisfied the transactions were carried out with Mr M's consent, I don't need to consider whether Nationwide ought to have flagged the cheque payment. That's because even if the cheque deposit into Mr M's account had been flagged, prompting contact from Nationwide to Mr M, I'm satisfied Mr M would have confirmed the transaction as genuine.

Customer service

I've considered Mr M's concerns about the customer service he received from Nationwide, particularly that he was unable to access his wages for 11 days and he was reliant on this money. I agree that Nationwide failed in this respect, it should have allowed Mr M to access his funds sooner and considering how often he used his account facility when he received his wages, I think this would have caused him trouble and upset.

So, I uphold this part of his complaint. Nationwide should pay Mr M £200 in addition to any compensation already paid to recognise this.

My final decision

My final decision is that I uphold this complaint in part. Nationwide Building Society should pay Mr M £200 compensation for the trouble and upset it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 November 2020.

Dolores Njemanze
ombudsman