

complaint

Mr A complains that Nationwide Building Society won't refund withdrawals from his current account which he says he didn't make.

background

On 21 January 2018, Mr A opened a current account with Nationwide. Mr A used his account regularly for daily spending. The daily ATM withdrawal limit on the account was £500.

On 7 March 2018, £1,560 was paid into Mr A's account. Mr A says this was a gift from his brother following the sale of a car.

On 14 March 2018, Mr A says whilst he was out with friends he lost his wallet which contained his Nationwide bank card and PIN. Mr A says he realised his wallet was missing from his back pocket when he went to pay for something in town.

Mr A rang Nationwide on 14 March 2018 and reported his card lost. Mr A asked Nationwide for a new card and PIN. Nationwide blocked Mr A's lost card so if anyone found the card it wouldn't be able to be used. And it sent out a new bank card on 14 March 2018. During the call Mr A asked for a new PIN to be issued as he couldn't remember his original PIN. Nationwide told Mr A that he'd receive his new card and PIN within about five days. Nationwide sent out a new PIN on 16 March 2018. The new bank card and PIN were sent to Mr A's home address, by Royal Mail in plain envelopes.

On 21 March 2018 at 23:13, Mr A's new card and PIN were used at an ATM to withdraw £500. On 22 March 2018 at 00:01 the card was used again at another ATM to withdraw £500.

On 23 March 2018, Mr A contacted Nationwide to let it know he hadn't received his replacement bank card or PIN. Mr A told Nationwide he hadn't made the withdrawals and asked Nationwide to refund him the £1,000 which was withdrawn from his account. Mr A thinks Nationwide should be responsible for someone else taking his money because it was aware he'd lost his card and PIN. And he'd never previously withdrawn the full ATM withdrawal limit of £500.

information taken from Nationwide's electronic audits

The following timeline for what happened between 21 January 2018 and 23 March 2018 has been compiled using the transaction history for Mr A's account and contact with Nationwide:

Date 2018	Time	Place/location	Notes	Amount (£)
21 Jan	16:42	Online	Account application.	
22 Jan			First card ending 5100 and PIN despatched to Mr A	
30 Jan - 6 Mar	Various	Various	Undisputed credits, debits, contactless and ATM withdrawals	
7 Mar		Albion Street	Cash paid into Mr A's account	£980
		Albion Street	Cash paid into Mr A's account	£580
8 Mar		ATM Link	Cash withdrawal - Genuine	-£50
9 Mar		Lyceum service station, Leeds	Contactless - Genuine	-£10.02
11 Mar		ATM Link	Cash withdrawal - Genuine	-£50.00
		ATM Notemachine Ltd	Cash withdrawal - Genuine	-£10.00
		ATM Bank of Ireland	Cash withdrawal - Genuine	-£10.00
		ATM Notemachine Ltd	Cash withdrawal - Genuine	-£110.00
14 Mar	15:55	ATM Link	Cash withdrawal - Genuine	-£10
	16:05	Mr A called Nationwide to report lost wallet containing card and PIN.	Card ending 5100 stopped and replacement requested along with a new PIN. No further attempts were made to use this card after it had been stopped.	
		Replacement card	Card ending 5209 despatched using Royal Mail to Mr A's home address	
16 Mar		New PIN	PIN despatched using Royal Mail to Mr A's home address.	

21 Mar	23:13	ATM Nationwide, Stockport.	Chip and PIN using card ending 5209. Balance enquiry – declined, incorrect PIN.	
	23:13	ATM Nationwide, Stockport.	Balance enquiry – approved, correct PIN.	
	23:13	ATM Nationwide, Stockport.	Withdrawal - Disputed	-£500
22 Mar	0:01	ATM Nationwide, Rochdale.	Balance enquiry and withdrawal – Disputed . About 35 miles from Mr A's home address.	-£500
	23:36	ATM Nationwide, 986 Leeds Road.	Balance enquiry and withdrawal – Declined as £500 ATM limit for day met.	-£300 declined
	23:37		Balance enquiry and withdrawal – Declined. £500 limit met.	-£10 declined
	23:37		Withdrawal – Declined. £500 limit met	-£10 declined
23 Mar		Mr A called Nationwide	Mr A called Nationwide to report he hadn't received his card and PIN.	
	12:24	Call with Financial Crime Team, Nationwide.	Mr A was informed his claim for £1,000 was declined.	
	14:11	Mr A went into a branch	Withdrawal of remaining funds and account closed.	-£310.37

information from Mr A.

Mr A says he lost his bank card and PIN. He says he didn't receive his new bank card and PIN, which was used to make the two £500 withdrawals. Mr A says he has trouble remembering his PIN which was why he normally keeps it in his wallet with his bank card.

Mr A has told us that he lives with his family and believes that his post was intercepted. So it would've been easy for somebody else to use his bank card and account. Mr A says he has had post go missing previously.

Mr A says he didn't make the withdrawals and the last time he used his bank card was on 14 March 2018 at 15:55 when he withdrew £10 from a cash machine. Mr A wants Nationwide to refund him the £1,000 which was taken from his account.

Nationwide's response to the complaint

Mr A complained about Nationwide's decision to decline his claim. Nationwide explained that it wouldn't be refunding the transactions because:

- Mr A's new bank card was sent to Mr A's home address;
- Mr A's new bank card and PIN were sent separately by Royal Mail and it's unlikely both the card and PIN were intercepted;
- Mr A doesn't live in a high risk post code area;
- both transactions were made using the genuine card and the correct PIN;
- the activity commenced on 21st March at 23:13 – but the bank card would have been delivered by Royal Mail in the day, if a third party had obtained the card they would have wanted to use them straight away, not leaving it until 11pm;
- the gaps in the attempted transactions are also not indicative of fraud, when the ATM transaction on 22/3/2018 at 00:01:54 is successful the next attempt on the card is not until the following night at 23:36, almost 24 hours later and
- there were no contactless or point of sale transactions to maximise use of the funds in the account.

Nationwide declined Mr A's claim on the basis that he either performed or authorised the transactions himself.

investigator's view

Our investigator didn't think the evidence supported Mr A's version of events and, on balance, she thought the disputed transactions had been authorised by Mr A. She said:

- Nationwide had sent out Mr A's new bank card and PIN separately;
- it's unlikely that both Mr A's new bank card and PIN were intercepted by someone unknown;
- she thought it more likely Mr A or someone at Mr A's home had been aware both items had been delivered;
- the genuine card and PIN had been used to make the transactions;
- the pattern of the disputed transactions didn't fit with what a fraudster might do and although the ATM's used to make the disputed transactions were about 35 miles from Mr A's address this didn't indicate Mr A wasn't aware of the transactions;

- the transfer of £1,560 into Mr A's Halifax account on 7 March 2018 was important, as it is unusual for an account to be opened for a short time, have a large cash deposit, then both the new card and PIN to be intercepted and used to remove funds from the account and
- Mr A's family share and store personal and confidential information.

Mr A disagreed and asked for an ombudsman to look at everything. He insisted that he hadn't made the withdrawals.

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've come to the same conclusions as the investigator.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

With that in mind I shall start by setting out what I have identified as the relevant considerations to deciding what is fair and reasonable in this case.

relevant considerations

The regulations relevant to this case are the Payment Services Regulations 2017 (the PSRs 2017). The particular provisions I've taken into account in this case are as follows:

"Consent and withdrawal of consent

67.—(1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—

(a) the execution of the payment transaction; ..."

"Evidence on authentication and execution of payment transactions

"75.—(1) Where a payment service user—

- (a) denies having authorised an executed payment transaction; or
- (b) claims that a payment transaction has not been correctly executed,

it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by a technical breakdown or some other deficiency.

(2) In paragraph (1) "authenticated" means the use of any procedure by which a payment service provider is able to verify the use of a specific payment instrument, including its personalised security features.

(3) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider is not in itself necessarily sufficient to prove either that—

(a) the payment transaction was authorised by the payer; ...”

Taking all the relevant considerations into account, including those set out above, my consideration about what’s fair and reasonable in this case must first address whether the disputed transactions were authorised by Mr A.

were the disputed transactions authorised by Mr A?

A number of possible explanations for how the disputed withdrawals came to be made have been put forward. The first is that someone unknown to Mr A made the transactions. The second explanation is that Mr A made the withdrawals himself, or authorised a third party to make them.

I’ve considered which I think is the most likely taking into account Nationwide’s records and Mr A’s description of events. But I acknowledge that I cannot know for sure what occurred; it’s a decision I must make on the balance of evidence. Having done so I think it’s more likely than not that Mr A either made the withdrawals himself, or authorised a third party to make them. I’ll explain why.

Mr A says he opened his Nationwide account so that he could have his wages paid into it once he’d secured a job and used the account regularly for living expenses. From looking at Mr A’s account activity, I can see that the transactions on the account are mostly ATM withdrawals or contactless payments. Mr A has told us that he had never withdrawn the full ATM withdrawal limit of £500. So he says this shows he wasn’t responsible for the two disputed transactions. But Mr A’s statements show on that on at least one occasion on 3 February 2018, the full £500 limit was withdrawn, albeit in two transactions of £200 and £300.

Mr A’s account statements also show that on 7 March 2018, £1,560 cash was paid into the account. From looking at Mr A’s account activity, this seems an unusually high amount. I say this because Mr A said he wasn’t working and the most Mr A had credited to his account in one instance prior to this date was £500 on 30 January 2018 and £500 on 1 February 2018. Both these transactions were bank transfers not cash deposits.

Mr A has told us that the £1,560 was a gift from his brother who had sold a car. And that might be the case. But, on balance, I think the timing of this deposit in relation to the disputed withdrawals is important. And I’m not satisfied that this deposit was a coincidence. I say this because I think it’s unusual for an account to be opened for a short time, a larger than normal cash deposit to be paid into the account. And for Mr A to then lose his bank card. Then not receive his new bank card and PIN, which were delivered separately to his home address. I also haven’t seen any evidence to show someone other than Mr A or his brother was aware he had this large sum of money in his account.

Nationwide’s records show that Mr A reported his bank card and PIN as lost on 14 March 2018. So it seems likely that Mr A carried out all of the transactions prior to this date. I’ve also kept in mind that Mr A hasn’t disputed these transactions. And has said that the last

genuine transaction he made was a £10 ATM withdrawal at 15:55 on 14 March 2018. As soon as Mr A reported his card as lost, Nationwide blocked the card. So it wouldn't have been able to have been used by anyone – including Mr A.

Nationwide has provided evidence to show that a new bank card was sent to Mr A's home address on 14 March 2018. And that a new PIN was sent two days later on 16 March 2018, again to Mr A's home address. As part of Nationwide's security measures they were sent out separately and in plain unmarked white envelopes. Nationwide has also confirmed that it used Royal Mail to send out Mr A's new card and PIN as it says Mr A didn't live in a high risk area, which meant it wasn't aware of any issues with post going missing and not arriving.

When Mr A reported his card as lost, Nationwide told Mr A that he'd receive his new card and PIN within 5 working days. So from looking at the timeline here, Mr A should have expected to receive everything by 21 March 2018, at the latest. But he didn't call Nationwide until 23 March 2018, *after* the disputed transactions were made, which was 9 days after reporting his card lost. Again I find the timings of Mr A's actions significant. I say this because if Mr A hadn't received his card I would've expected him to contact Nationwide sooner than he did. Especially if he wasn't able to access his account for everyday living expenses as it appears was normal for him.

Mr A has suggested that someone else must have intercepted his post. And then went onto make the disputed transactions. But I don't find this explanation plausible. I say this because for someone else to be responsible they would've needed to be aware of where Mr A lived, had access to his home or letter box, known Mr A had reported his card and PIN lost, and had ordered new ones. The individual would've then needed to monitor Mr A's post for a number of days, identify the bank card and take it. The same person would've then had to wait for Nationwide to send out Mr A's PIN. And intercept that too.

I've also kept in mind that the disputed activity commenced on 21st March at 23:13 and that the new bank card and PIN would've most likely been delivered by Royal Mail sometime during the day. If an unknown third party had obtained the card and PIN I think it reasonable they would want to use them straight away, not leaving it until nearly midnight to do so, which increased the risk of discovery.

The gap in the attempted transactions is also not indicative of fraud. I say this because when the ATM transaction on 22 March 2018 just after midnight is successful the next attempt on the card is not until the following night at 23:36, almost 24 hours later. So when I weigh everything up, I think it's unlikely that someone unknown to Mr A intercepted his post as he's said. For the reasons I've explained, I think it's more likely that either Mr A or someone at Mr A's address took possession of the new card and PIN.

Whilst I accept it's possible that someone close to Mr A or living at his address is responsible for the transactions. I also think Mr A would've been aware and consented to this. I say this because from the information Mr A has provided to us, I can see that Mr A's family share and store personal and confidential information. For example Mr A has access to his brother's email account and Mr A stored his bank card details on his mobile phone. So based on this I think it's likely Mr A shared other information including his account details. And he was aware of the activity on his account.

Having looked at what's happened in this case, I think it's more likely than not that Mr A made or authorised the transactions he disputes. I say this because:

- the disputed transactions were authorised using Mr A's genuine card (chip) and PIN;
- there is no convincing explanation for how an unknown third party could have been aware Mr A lost his bank card and PIN, he'd ordered replacements, and then intercepted Mr A's bank card and PIN which were sent to Mr A's home address separately via unmarked mail;
- the timings of the disputed withdrawals and attempted transactions are unusual and
- Mr A didn't report he hadn't received his bank card and PIN until 23 March 2018, which was twice as long Nationwide had told him he'd have to wait and *after* the disputed transactions had been made.

In summary, I think it's fair and reasonable for Nationwide to refuse a refund because, overall, I think it's more likely than not that Mr A made or authorised the transactions that he disputes.

my final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 September 2019.

Sharon Kerrison
ombudsman