

Complaint

Miss P complains Nationwide Building Society failed to refund her a series of transactions she didn't agree to. She says the transactions were made by people she'd trusted who were using her mobile phone to play games. She was unaware they were using her debit card to make payments to a gambling website.

Background

Miss P opened a current account with Nationwide in February 2018. Between April and September 2018 nearly 300 payments were made to a company running a gambling website. The total sum of the transactions was approximately £6,750, although some money was paid back to the account from the company.

Miss P suspects a group of people made the transactions without her permission. These people befriended her in April 2018 and would visit her home usually at night. She let them use her phone to play games, which she believed were free, and one of them became her boyfriend. She says she let him use her card to make several payments to a different gambling website and allowed some of them to occasionally use her card to pay for food. She also says her card went missing on occasion and she'd sometimes lend her phone to them.

Miss P let us know she has several mental health conditions and a learning disability. She says this makes her very trusting of people and she was taken advantage of. She says her mum discovered what had happened after reviewing her bank statements. This was after her mum had found the people in question at her address and forced them to leave.

Nationwide refused to refund the transactions, so Miss P complained to them. They rejected her complaint. They said the gambling company had provided records which showed the account was opened using her personal details and address. The company had also paid some funds back to the account, so Nationwide couldn't see how someone else would've benefited from this. Unhappy with this response, Miss P brought her complaint to us.

An investigator at our service didn't uphold Miss P's complaint. They were satisfied the correct card details from Miss P's card had been used to make the payments. And they thought either Miss P made the transactions herself or she'd agreed to other people making them. In summary they said:

- Nationwide's records showed some transactions made to the gambling website were in Blackpool. Miss P says she never visited Blackpool, but at the same time these transactions were made, there were others also made in Blackpool which weren't being disputed.
- There were almost daily log ins to Miss P's online account during the period in question. A number of these weren't at the times Miss P had said the group of people would visit. Looking at how many log ins there were, it was likely Miss P had logged in on these occasions or someone else did with her knowledge. The transactions to

the gambling company were clear and numerous, so Miss P would've probably seen them and questioned what was happening if she didn't know about them.

Miss P made a previous complaint involving gambling transactions on a current account held with a previous bank. That bank had refunded the transactions but then reversed their decision when they saw the transactions were done on Miss P's phone and the same IP address was used to check her online account. The bank had produced a record to show Miss P had told them she'd noticed the transactions on her statements. So, it seems she has some awareness of how to review statements.

- Some payments into Miss P's account were from the gambling website. It was unlikely someone who'd want to gain from gambling would do so if they weren't going to have the winnings paid to them. Miss P had said she kept her card PIN in an ornament with her card. So, it would've been easier for someone to take her card and withdraw money, instead of trying to get funds through gambling.

Unhappy with this response, Miss P has asked for a final decision from an ombudsman, so the complaint has been passed to me.

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 decided not to uphold Miss P's complaint for very much the same reasons our investigator gave.

what I need to consider

For Nationwide not to refund the transactions I'd need to think Miss P authorised them. In deciding this I first need to consider whether the payments were authenticated – so were they validated using the correct security details on Miss P's card? This is for Nationwide to show.

Nationwide have provided records which show the correct card details were inputted on the website to make each payment. So, I think each payment was authenticated. So, I now need to consider whether I think Miss P or someone with their permission consented to the transactions

Did Miss P agree to the transactions or know they were happening?

I can't know for certain what happened when each transaction was made. But when facts are unclear, I need to decide what I think is most likely to have happened. It's possible that all the payments made to the website were done without Miss P's knowledge. But based on everything that's been said and the evidence available to me, I think it's more likely than not that Miss P made the payments, or knew other people were making them. I'll explain why:

- Miss P has said she knew the group of people were playing “fruity” games, but that she thought the games were free. She’s also said one of them was her then boyfriend, who she let use her card to gamble on a different website. So, I must also consider it’s possible she let him use her card to make payments to this website.
- There are multiple log ins to Miss P’s account during the entire period of the transactions. It’s possible some of them were done by the persons she suspects. But the log ins didn’t only happen when she says these people were at her property. They also happened during the morning and afternoon, nearly every day. So, I think at least a sizeable amount of the log-ins were Miss P.

I think Miss P would’ve been aware of the transactions early on. I can’t see why she checked her account if not to see what activity was taking place on it. She says this is her only current account and it appears she receives important payments into it. The transactions clearly state the name of the gambling company and represent a large regular outgoing over a long period. So, I fail to see how she wouldn’t at some point have noticed them or raised a concern if she didn’t agree to them.

- Miss P made a similar claim on a card she held with another bank the previous year - the transactions were also to a gambling website. I’ve taken very seriously what she’s said about the person she says made those transactions and how they treated her. But I believe the risk of people using her phone and card to make transactions of this kind was known to her prior to her opening her Nationwide account. And from the information the other bank has given us, it appears she’d raised the complaint after noticing the transactions on her statements.

I’ve taken very seriously what Miss P and her family have told us about her situation. And based on what they’ve said, I think it’s possible she was taken advantage of by some unsavoury people – for which she has my upmost sympathy if that is the case. But I can only hold Nationwide responsible for transactions she didn’t authorise – and I can’t fairly conclude she was unaware of what was happening on her account when the transactions were happening.

Nationwide say they weren’t aware of Miss P’s conditions before the complaint was raised. And I can’t see that they were made aware. But it’s important for Nationwide to understand them now and to see what things they can do to help Miss P going forward. But because I think Miss P understood the transactions were going out of her account, I don’t think anything different would’ve happened had Nationwide got in touch at the time they were happening.

My final decision

For the reasons I’ve explained above, I’ve decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss P to accept or reject my decision before 12 December 2019.

Liam King
ombudsman