

complaint

Mr R complains that Nationwide Building Society won't refund a cash withdrawal and retail transaction made with his debit card which he says he didn't make or authorise. Mr R also says Nationwide unfairly placed a Credit Industry Fraud Avoidance System (CIFAS) marker against his name. He wants Nationwide to remove the marker.

background

Mr R had a current and savings account with Nationwide.

current account

Mr R says that two fraudulent withdrawals totalling £2,204.86 were made from his Nationwide current account on 27 April 2018.

The relevant transaction and online activity is:

| date | time | activity | Amount | Device |
|-------------|-------------|---|---------------|-------------------------------|
| 27/04/2018 | 01:00 | credit into Mr R's account via online bank transfer | £2,800 | |
| 27/04/2018 | 01:55 | Mr R logged into his mobile banking app (verified using Touch ID) | | Nationwide mobile banking app |
| 27/04/2018 | 01:55 | balance and statement check | | Nationwide mobile banking app |
| 27/04/2018 | 06:33 | Mr R logged into his mobile banking app (verified using Touch ID) | | Nationwide mobile banking app |
| 27/04/2018 | 06:33 | balance and statement check | | Nationwide mobile banking app |
| 27/04/2018 | 09:22 | ATM balance check | | |
| 27/04/2018 | 09:35 | point of sale transaction (Chip and PIN) which required ID verification | £1,704.86 | |
| 27/04/2018 | 10:01 | ATM cash withdrawal | £500.00 | |
| 27/04/2018 | 10:16 | Mr R logged into his mobile banking app (verified using Touch ID) | | Nationwide mobile banking app |
| 27/04/2018 | 10:16 | balance and statement check | | Nationwide mobile banking app |

On 27 April 2018 at 20:45 Mr R called Nationwide to say he didn't make the disputed transactions. And that he was at home at the time they were carried out. He told Nationwide that he'd lost his bank card. And that no one else knew his PIN. He couldn't provide any information about how his card was lost or stolen.

Nationwide investigated and didn't accept Mr R's disputed transaction claim. It said there was no evidence of fraudulent activity and that Mr R had authorised the transactions or made them himself because:

- Mr R's genuine card and PIN was used for both disputed transactions
- Mr R hadn't provided any explanation as to how his bank card and PIN were compromised
- additional identification was required for the £1,704.86 transaction and a driving licence was provided
- balance enquires were carried out before and after the disputed transactions using Nationwide's Touch ID mobile banking app
- the disputed transactions would've affected Mr R's available balance and took Mr R close to his overdraft limit
- Mr R would've been aware of the difference in his available balance upon logging in to his mobile banking app
- Mr R didn't report the fraudulent transactions until 20:45 on 27 April 2018

savings account

On 7 August 2018, £999.98 was credited to Mr R's Nationwide savings account.

Following this at 16:10 £500 cash was withdrawn from the account using a cash machine. And at 16:14 a £350 cash counter withdrawal was made in a branch. On 8 August 2018, at 09:36 £60 cash was withdrawn from a cash machine. All three transactions were made using Mr R's genuine card and PIN.

On 13 August 2018, Nationwide were contacted by another bank, which I will refer to as bank B. It said Mr R wasn't entitled to the £999.98 payment made to his savings account on 7 August 2018.

On 16 August 2018, Nationwide spoke to Mr R about the payment. During the call Nationwide told Mr R that it had been notified by bank B that the funds were fraudulent. Mr R didn't dispute he wasn't entitled to the funds. And that he'd spent the money. So Nationwide closed Mr R's account and recorded a CIFAS marker against his name. Mr R didn't agree with Nationwide's decision. So he contacted us and asked us to look into the disputed transactions on 18 April 2018 and the recording of the CIFAS marker.

An investigator looked into Mr R's complaint but didn't uphold it. Having looked at the sequence of events, and Mr R's online activity, he said it was more likely than not Mr R authorised the disputed transactions which were made on 27 April 2018.

The investigator also asked Mr R some additional questions about the £999.98 payment made to his account in August 2018. Mr R told the investigator that the money was from the sale of goods to a friend. The investigator asked Mr R to provide evidence to support what he'd said such as an invoice, and communications between him and his friend. But Mr R didn't provide anything. The investigator noted that Mr R hadn't provided this explanation to Nationwide. And neither had he disputed that he wasn't entitled to the funds when he spoke to Nationwide. So the investigator said Nationwide hadn't done anything wrong when it applied the CIFAS marker.

Mr R didn't agree with the investigator's view. He said he was at home at the time of the disputed transactions on 27 April 2018, which could be verified by his online activity. So it

wasn't him who carried out the transactions as he couldn't be in two places at once. And he's still upset Nationwide recorded a CIFAS marker against his name. As no agreement could be reached the complaint has come to me to decide.

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 the complaint, for broadly the same reasons as the investigator.

disputed transactions

Nationwide is required to refund the amount of unauthorised transactions if Mr R did not make or authorise them. The relevant regulations, to this effect, are the *Payment Services Regulations 2017 (the PSRs 2017)*. Mr R says he didn't make the point of sale transaction and cash withdrawal. And he's seeking a refund of £2,204.86. So my primary concern is to come to a view about whether or not I think Mr R authorised the payments.

I'm satisfied from looking at Nationwide's technical evidence that Mr R's genuine card and PIN were used to make the disputed transactions on 27 April 2018.

From looking at the evidence, I don't think it's unreasonable for Nationwide to conclude that Mr R authorised the transactions. I say this because:

- Mr R says he hasn't disclosed his PIN to anyone one else. And hasn't recorded it anywhere. So there's no convincing explanation for how an unknown third party would know Mr R's PIN
- Mr R hasn't offered any explanation about how his card was lost or stolen or how somebody else would've known his PIN
- additional photographic identification was used to make the £1,704.86 transaction
- Mr R hasn't disputed checking his account via Nationwide's mobile banking app before and after the disputed transactions
- Mr R didn't report the disputed transactions until several hours after the last disputed transaction yet I can see from Mr R's account activity that Mr R carried out balance enquires before and after the disputed transactions. So I find it unusual that he didn't report the issue sooner
- even though Mr R says he was elsewhere at the time of the disputed transactions, I haven't seen any plausible explanation as to how an unknown third party could've obtained his card and PIN without Mr R's authority

So when I weigh everything up, I think it's more likely than not that Mr R authorised the transactions. I therefore think it's fair and reasonable for Nationwide to refuse him a refund of the disputed transactions.

CIFAS marker

Nationwide says it applied the CIFAS marker because Mr R received fraudulent funds into his account. So I've looked at whether Nationwide was fair to apply the marker, based on the evidence it had, and the investigation it carried out. And what the rules say about applying such markers.

Having reviewed Mr R's account of events and the evidence Nationwide provided, I'm satisfied that Nationwide have sufficient evidence for the CIFAS marker to be recorded against Mr R's name. In coming to this view, I've taken into account the following reasons:

- Nationwide have provided evidence to show the inward payment received on 7 August 2018 was fraudulent
- Mr R had an opportunity to alert Nationwide he'd received fraudulent funds. But he benefited from the funds by making cash withdrawals
- Mr R didn't dispute the funds were fraudulent when he spoke to Nationwide on 16 August 2018 about the closure of his account
- Mr R provided a different explanation to our investigator about the source of the funds. But he hasn't provided any evidence to support this

Taking everything into account, I find that Nationwide have met the burden of proof required by CIFAS to add the marker. So I think it's fair that it reported Mr R to CIFAS. And I'm not going to ask Nationwide to remove the marker.

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 R to accept or reject my decision before 23 September 2019.

Sharon Kerrison
ombudsman