

complaint

Miss T's complained National Westminster Bank Plc won't refund disputed transactions on her account.

background

On 8 February 2017, NatWest called Miss T to ask her about some of the transactions on her account. It asked her for her debit card details but she couldn't provide them. She told it she'd lost her debit card sometime between 3 and 5 February 2017. She said she'd last used it on 3 February, in a supermarket, and had told it on 6 February, when she'd noticed it was missing, that she'd lost it.

It said it didn't have a note of her earlier call and didn't know the card was missing. It cancelled her card immediately.

NatWest told her there'd been 204 contactless transactions and 50 ATM withdrawals totalling £500 on her account. The transactions totalled £2,723.04. Someone had also used her card to make two £300 cash deposits in the ATM on 4 and 5 February.

Miss T said she didn't recognise any of the transactions and couldn't have made them since she'd lost her card. She asked NatWest for a refund.

NatWest thought it was unlikely an unknown third party had stolen her card. This was because some of the transactions were chip and pin authorised. And although there'd been two failed attempts at the pin, it was reasonably satisfied that whoever used the card was familiar with the pin.

It also said there was a balance of £444.93 in the account yet the person with the card waited until a day before using it. It thought it was unusual for a fraudster to wait so long before using a stolen debit card.

For these reasons, NatWest refused to refund her.

Miss T didn't think this was fair so she brought her complaint to this service.

Our investigator considered the evidence. She too didn't think it was likely an unknown third party had stolen her card and guessed the correct pin. She didn't ask NatWest to refund the money.

Miss T disagreed with our investigator's view. She'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 investigator's view. While this service can't investigate who made the transactions, I don't think there's enough evidence showing they were made by an unknown third party. I'll explain why I think this.

There were some chip and pin transactions amongst the contactless payments. NatWest explained the card will lock after a certain number of contactless transactions. Hence the chip and pin transactions. The full pin is then required to reset the card so that the customer can continue to make contactless payments.

So, it follows that whoever used the card for the contactless payments and the chip and pin ones, must've had the correct pin. Miss T said she didn't keep a written note of her pin, which I think makes it less likely that a stranger stole her card and used it. Admittedly, there were two failed attempts but I think it would've been an exceptional stroke of good luck for a complete stranger to guess the correct pin on the third attempt.

It's hard to ignore this evidence. But equally, just because the chip and pin were used doesn't mean this wasn't fraud. And this service wouldn't normally accept this as the only proof the payment was authorised. We would look at what other evidence exists.

There were two cash deposits of £300 on 4 and 5 February. It's unusual for a fraudster to deposit money into an account. Not only is it a risky thing to do but there's no guarantee they'll get it back.

But as well as the cash deposits, NatWest's records show that between 3 and 7 February, there were 122 balance enquiries on Miss T's online account. These included two balance enquiries within minutes of the £300 cash deposits.

I find this the most persuasive evidence that Miss T probably knew about the transactions, even if she didn't make them. Whoever accessed her online account must've had her log in details. This would've included personal security information, which, really, only she would've had. So if she were checking her online account, she would've seen the disputed transactions and the cash deposits earlier. Yet, she didn't report them to the bank. And she hasn't commented on the online activities, even though our investigator has referred to them in her view.

NatWest also thought the way the card was used didn't fit the normal pattern of a fraudster. It says a fraudster is more likely to make several cash withdrawals or point of sale transactions in a short space of time. In this case, the person waited a day before using the card. And they didn't make large or unusual transactions but mainly small payments to local stores.

As I said, I can't investigate who made the transactions. And I appreciate Miss T says she was working when some of the transactions were made. But this doesn't rule out the possibility that someone she knew used her card. When I consider all the circumstances, I think the evidence that this was an authorised payment outweighs the reasons why Miss T believes this was fraud.

The industry codes of practice say a bank doesn't have to refund disputed transactions if it's satisfied the customer's authorised the payments, or acted fraudulently or was grossly negligent, (this means the customer didn't take proper care of their security information). NatWest's terms and conditions include the same limitation.

Based on the evidence I've seen, I think it was reasonable for NatWest to treat the disputed transactions as authorised and so I won't be asking it to refund her.

I'm sorry this will be disappointing news for Miss T but I hope the reasons for my decision are clear.

my final decision

My final decision is I won't be asking National Westminster Bank Plc to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 30 November 2017.

Razia Karim
ombudsman