

complaint

Mr H is unhappy with Nationwide Building Society's decision to not refund transactions he says he didn't make or authorise in August and October 2017.

Mr H has another complaint with this service relating to other disputed transactions, beginning in February 2018 and running through to April 2018. I'll issue a separate decision for that case, but may refer to it in this decision.

background

One of our investigators provided his opinion on this case in March 2019 and both Mr H and Nationwide have had the opportunity to see and respond to it. The investigator set out the background to the complaint and the available evidence in great detail. There's been no dispute raised about what was set out. So I won't go on to repeat all of the detail here. The reason for this final decision is that Mr H disputes the investigator's findings in not upholding his case.

The key facts are as follows.

- Mr H disputes a large number of transactions made from 1 to 5 August 2017. They involve the use of his bank card for chip and PIN and contactless transactions at various merchants as well as cash machine withdrawals. There are 21 such transactions in dispute, totalling £770.61.
- Mr H confirmed some genuine chip and PIN card spending amongst the disputed transactions.
- Mr H further disputes all online payments to an online gambling company. There are 22 such payments totalling £515. The payments are made from 2 to 4 October 2017.
- Mr H said he did gamble but not online.
- Mr H says he never noticed his card missing and he still had it in his possession when he noticed the disputed transactions. From the bank records, it appears he initially said there was no record of his PIN. He later told us there had been a record kept with the card.
- Nationwide said it wouldn't refund Mr H as it thought it was more likely than not he authorised the transactions. It didn't believe a third party had carried them out without Mr H's knowledge or consent.
- Nationwide said the August 2017 transactions were all made with Mr H's genuine card and in many instances the PIN was used as well. It couldn't see how a fraudster could have obtained both.
- Nationwide found out from the gambling company that the account held there had been set up using all of Mr H's genuine information including name, address, phone number and date of birth. The only thing that didn't match its records was the email address used.

- When Mr H reported the disputed transactions he asked Nationwide to block any further online spending. This didn't happen and forms part of Mr H's other complaint. I've made reference to it here as it becomes important to Mr H's response to our investigator's opinion.
- Mr H has said he can't remember where he was living at the time of the disputed transactions.

Our investigator considered all of the available evidence and information. He didn't uphold Mr H's complaint and thought Nationwide had acted fairly and reasonably. He couldn't see how someone other than Mr H had carried out the transactions. He said:

- there was no explanation for how someone could have taken, used and replaced Mr H's card without him noticing. He noted this would have had to have happened at least three times given Mr H used the card genuinely between the disputed transactions.
- Mr H's account wasn't fully utilised by whoever was carrying out the transactions; there was money available to spend but it was left in the account. And there were numerous low value transactions which didn't point to a fraudster being in operation.
- some of the disputed transactions were made at places Mr H had genuinely withdrawn cash or spent money, which seemed unusual and unlikely
- he couldn't see any benefit to a fraudster carrying out online gambling transactions as there would be great difficulty in them obtaining any winnings
- the details held by the gambling company did match Mr H's information so he thought it was more likely than not he did set up the account himself.

Mr H disagreed with the investigator's opinion. He said:

- the outcome was based on opinion not evidence.
- it was for Nationwide to prove he had carried out the transactions and it hadn't done so.
- if Nationwide had applied the block on his account as requested, the spending wouldn't have been possible.

The investigator explained how we consider cases. He told Mr H that we gather all of the evidence we can and use that to inform our view of what we think is more likely than not to have happened. And he confirmed he thought the evidence showed it was more likely than not Mr H authorised the transactions himself.

He also pointed out the transactions subject to this complaint were unaffected by the request to block online payments as they'd happened before that.

Mr H remained unhappy and asked an ombudsman to review his complaint.

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 not upholding it. I'll explain why.

The relevant regulations here are the Payment Service Regulations 2009 (applicable at the time of the transactions). They set out the circumstances in which a bank can hold a customer responsible for spending on their account and when they need to provide a refund. They essentially say that a customer can only be held responsible, in most circumstances, when they've authorised transactions themselves.

Before I go on to set out my reasoning for not upholding Mr H's complaint I'd like to confirm for Mr H that what our investigator has said in terms of how we consider cases is correct. We ask for evidence and information from both parties and use that in our investigations. We base our findings on that evidence.

Sometimes we won't have all the evidence we'd like. And so we have to use what is available to say what we believe is, on the balance of probabilities, more likely than not to have happened.

Mr H has said Nationwide has to prove that he made the transactions himself. That's true, to an extent. We expect account providers to show how payments have been made and also to consider what the customer has said about them in cases like this. But the evidence or proof that a customer carried out a transaction can be varied. And it doesn't have to come in the form of CCTV footage which actually shows a transaction happening, for example.

Instead, the available evidence will be pieced together to see what we think is more likely than not to have happened. In cases like this it generally means looking to see if there's a reasonable explanation for how the disputed transactions could have taken place without the customer's involvement. If there is no reasonable explanation then the finding must be made that it's more likely than not the customer did authorise the transactions, despite what they've told us.

It's from here we then consider that a current account provider has acted fairly and reasonably in holding its customer responsible for any disputed transactions.

My review of Mr H's case is independent of our investigator's findings. I've considered everything afresh. But I've reached the same outcome and for broadly the same reasons.

I note Mr H hasn't raised any specific objections to what our investigator said about the outcome; they're limited to saying Nationwide has to prove it was him and a reference to the requested block on his account.

I see no reason to depart from the outcome and explanation given by the investigator. It remains the case that there's no reasonable explanation for how someone other than Mr H carried out the transactions. I can't see how someone would be able to take, use and replace Mr H's card without him realising. Mr H has identified no possible opportunities himself and I've not been able to identify any from the evidence we have.

Even setting that point aside for a moment, I can't see why someone in possession of Mr H's card and PIN – either with or without his permission – would limit their spending in the way that has happened here. It's not the account usage of an opportunistic fraudster.

I think it's also worth noting here that Mr H has said he did keep a record of his PIN with his card. If that's true, and it's how someone was able to use his card without his authority, then he'd almost certainly still be responsible for any chip and PIN purchases and cash machine withdrawals. I don't think this is likely what happened here. But I've briefly covered the point for completeness. The same outcome would likely be reached if Mr H had given his card and PIN to someone else.

Our investigator's findings around the gambling transactions are also fair and reasonable. It's true that a fraudster wouldn't be able to access any winnings made on the online account. And so it's difficult to see what purpose they'd have had in carrying out any spending.

Whoever it was would also have needed to know a good deal of information about Mr H, along with having obtained his card details. I don't believe this would have been easily obtainable, along with Mr H's card details. I also note Mr H has genuinely spent money with other gambling companies, both online and in betting shops. And so the transactions appear to be in keeping with his normal spending.

I believe it's more likely than not Mr H authorised the transactions he's disputing. And so Nationwide doesn't have to refund them.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 February 2020.

Ben Murray
ombudsman