

complaint

Mr R and Ms S complain that they were not responsible for payments made from their account with National Westminster Bank Plc ("NatWest"), to certain online merchants that NatWest are holding them liable for. They are also unhappy that the bank allowed the payments to be made.

background

The payments concerned were made to various online merchants, largely ones used before, and to intermediaries acting for online merchants, the type of which had been used before by Mr R and Ms S.

Our adjudicator did not recommend that the complaint should succeed. She did not consider that the account had been used by a third party fraudster to make the payments. She came to this conclusion taking into account, amongst all the circumstances surrounding the payments:

- information about communication between an email address used by Mr R and Ms S and one of the intermediaries about a payment made from one of the principal online merchants that the intermediary was acting for;
- that, using the above email address, arrangements were made to have a payment made to the person with the profile on the online merchant gambling sites which appeared to be in the name of Ms S;
- that in order for the cheque payment to be made, the identities of both Mr R and Ms S had to be proven. This was successfully done by, amongst other papers, sending copies of Mr R's passport, the birth certificate of Ms S and tax papers;
- a cheque was sent to the home address of Mr R and Ms S. The adjudicator found it unlikely a third party fraudster would arrange for a payment to be sent to the genuine account holders' home address;
- the information used in relation to one of the online merchants contained the home address of Mr R and Ms S and the mobile phone number of Ms S; and
- a third party fraudster using the account, who received a credit back to the account, would be limited in how to gain benefit from the credits if they were able to do so at all.

The adjudicator did not consider that the bank had acted incorrectly in not preventing the payments being made, believing that – on the balance of probabilities - the disputed transactions were more likely than not to have been authorised by one of the joint account holders.

Mr R and Ms S have asked for their complaint to be reviewed by an ombudsman.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same overall conclusion as the adjudicator.

Mr R and Ms S have reiterated that they did not authorise the transactions although they state that, primarily, their complaint is that NatWest failed to prevent the payments being made despite it being asked to not make payments to certain payees.

I recognise that Mr R and Ms S have written at great length and there are very strong feelings about what might have happened here. I have read carefully and taken full account

of everything that has been submitted. I hope therefore that Mr R and Ms S will not consider the brevity of my decision a discourtesy to them or that it represents that I have inappropriately shortened my consideration of the complaint. However, I agree with the adjudicator – and for the same reasons – that the bank has not acted inappropriately in holding them liable for the value of the disputed transactions. And my role is limited to determining whether it was fair and reasonable to debit the account with the value of the disputed transactions rather than to make a determination as to how precisely the transactions occurred.

Where evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities – that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

I accept that it is possible that the bank account of Mr R and Ms S has been subject to what they describe as 'identity theft'. However, on balance, I find it more likely than not that the transactions were genuinely authorised – for the reasons set out by the adjudicator.

That said, I recognise that Mr R and Ms S say that their complaint is primarily that the bank should not have allowed the transactions to be made. However, on the basis that I am concluding that the transactions were, on balance, genuinely authorised, I do not consider that it would be fair and reasonable to make any decision that reflected that the bank had acted inappropriately in allowing them to be made.

my final decision

In light of what I have said, my final decision is that I do not uphold this complaint and I make no award of compensation to Mr R and Ms S.

Ray Neighbour
Ombudsman