

complaint

Mr M has complained Nationwide Building Society won't refund him for gambling transactions he disputes were made by him.

background

Mr M had held an account with Nationwide since February 2018. In August 2018 after his sister's car was stolen, he reported his debit card and phone missing to Nationwide. He noted there'd been a lot of high-value gambling transactions on his account which he said weren't him. When he called initially to report the fraud, he was led to believe he'd be getting his money refunded.

Nationwide decided Mr M had made these transactions himself so wouldn't refund him. He brought his complaint to the ombudsman service.

Our investigator reviewed the evidence. This included information about a lot more attempted – but declined – transactions happening with the same gambling company and others all on 26 August 2018. Nationwide could also show they'd sent three messages to Mr M's phone saying transactions had been blocked using Mr M's card and asking him to confirm whether it was him. In all instances they'd got texts back confirming Y for yes. They'd also said these transactions had all been declined so would have to be re-done if Mr M wanted these authorised. Like Nationwide, our investigator thought Mr M had authorised all of this spend with his debit card. She'd also found his story about the stolen car and possessions didn't match evidence she'd got from the relevant insurance providers or the police.

Mr M disagreed with this outcome. He's asked an ombudsman to consider his complaint but not provided any further evidence to support 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've reached the same conclusion as our investigator and for similar reasons. I'll explain why.

Firstly I can see the timeline of events, detail on the transactions, the IP addresses and how the transactions were made were comprehensively covered in our investigator's view of 3 January 2020. I don't intend to repeat everything that was said there. Except to say I'm satisfied I've reviewed the complaint thoroughly and considered all the relevant evidence carefully.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing else that's had a marked impact on the decision I'm making here. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

To help me decide what happened, I've looked at the evidence of the transactions, as well as what both Nationwide and Mr M have told us. Our investigator also contacted all the relevant gambling companies where transactions had been made or attempted during the disputed period, as well as other payment platforms.

She also tried to get a full picture of what happened with the stolen car.

It seems from the evidence I've seen this car may not have been Mr M's but his sister's. Mrs M has also described it as a friend's car. It was supposedly stolen with both his and his sister's personal possessions in it. But the insurer at the time has no record of any claim. That in itself is surprising if personal possessions were also stolen. Mr M says the car was recovered a week later with no damage. Local police were able to confirm they'd never been told the car was stolen. Mr M disputes this but the crime reference he provided to us is actually an Action Fraud number (which would, of course, may be more relevant to the disputed transactions which amounted to more than £80,000).

I can see from Mr M's statements that a significant sum was spent soon after this on what I believe is a car.

The following summarises what I've considered:

- Mr M had recently received very large payments into his Nationwide account. More than £275,000 was paid in over a week in August 2018. Mr M has refused to tell us what these payments were as he argues this is irrelevant to our investigation. I disagree as it informs us how Mr M used his account. I appreciate however that he may have privacy concerns.
- Mr M had a history of gambling. In fact one of the last transactions which he didn't dispute on his account was in a casino for £4,000.
- All of the disputed gambling transactions took place on 26 August between 10:10 and 15:10. There were over 70 transactions with only 11 being accepted.
- One of the gambling companies (who I'll call P) held accounts in Mr M's name. P had previously suspended Mr M's account. It then seems Mr M opened an account in his sister's name but using an email address which would appear to be attached to him.
- Although Mr M alleges this was done by whoever stole his and his sister's possessions, I think this is very unlikely. Partly as I can't see any evidence their possessions were stolen.
- If an unknown third party had got hold of enough of Mr M's personal details to open gambling accounts in his name (a stretch in itself as there would be no benefit to the fraudster but putting that issue to one side) and then discovered lots of transactions were being declined, the most likely behaviour would be to move to a different fraud and discard Mr M's card.
- It's most unusual for a fraudster to phone the customer's bank (as happened here at 13:22 on 26 August) to check the balance of the account and then continue trying to use the card for the same activity.
- Also no unknown third party would assume that Mr M's account had the amount of money it did have in it to support the spend being carried out. There was over £150,000 in the account when Mr M called Nationwide (as I believe all the evidence points to it being him). This suggests Mr M was just checking he had as much money as he needed to continue gambling.
- I recognise there were other online purchases made after the gambling stopped at 15:10 but this was relatively small compared to the gambling activity.
- The phone messages would suggest these were carried out by Mr M. I can't tell what number he was calling from but the way he identified his postcode and spoke – compared to the calls he made to report his card was missing – seem similar enough for me to conclude this.

Overall based on the evidence I can only conclude that Mr M authorised these transactions himself. He may well have then regretted spending so much but I can also see Nationwide identified the unusual pattern of high-value spending and declined many attempts by Mr M to spend significantly more. Although I can see from Mr M's account statements, it's clear that most of this money was then spent quite soon after either gambling overseas or elsewhere in the UK.

I've considered the point Mr M raised that Nationwide implied he would get refunded. I agree they could have made it clearer that there was no guarantee but he was quickly told that because of the high-value in dispute this would need to be considered by a senior manager. As Mr M knew he'd made these transactions himself I think he's clutching at straws to rely on this as a way of being refunded. I don't believe there's any obligation on Nationwide to do this.

Nationwide closed Mr M's account shortly after this. They're allowed to do this and based on the use Mr M made of his account; I can't say they acted unfairly here.

my final decision

For the reasons I've given, my final decision is not to uphold Mr M's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 April 2020.

Sandra Quinn
ombudsman