

complaint

Mr A says £1,230.00 was withdrawn from his National Westminster Bank Plc account without his authority or consent. He'd like this amount to be refunded. He says he didn't receive the card or PIN (personal identification number) after opening a new account.

background

I attach my provisional decision, which forms part of my final decision. In my provisional findings I said I intended to uphold Mr A's complaint. Mr A contacted us to say he accepted my provisional findings. National Westminster Bank Plc has also been in touch to say it also accepted the conclusions set out in my provisional decision and it has now paid Mr A the settlement amount.

my findings

I have reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint

As both parties agree with my previous findings, I see no reason to change my conclusions as set out in my provisional decision.

my final decision

So, for the reasons I've explained, I uphold Mr A's complaint against National Westminster Bank Plc.

putting things right

In putting things right for Mr A, I direct National Westminster Bank Plc to:

- refund the disputed transactions to the value of £1,230.00;
- adding 8% simple interest per annum from the date of the disputed transactions to the date of the settlement;
- in making the refund NatWest, in accordance with the terms and conditions applicable to Mr A's account, it's entitled to withhold up to £50, if it exercises this right, I consider that it would be fair and reasonable for it to inform Mr A of its decision to do so;
- remove any adverse markers from Mr A's credit file that were added by NatWest following its decision not to refund him the money and close his account; and
- pay Mr A £300 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 November 2018.

Sophia Smith

ombudsman

copy of my provisional decision

complaint

Mr A says £1,230.00 was withdrawn from his National Westminster Bank Plc account without his authority or consent. He'd like this amount to be refunded. He says he didn't receive the card or PIN (personal identification number) after opening a new account.

background to the complaint

Mr A visited a branch of NatWest on 5 October 2017 to open a bank account, as a new student to the UK. When he opened the account he deposited £1,700.00 in cash he'd brought with him from his home country. He says NatWest told him his new card and PIN would follow in the post. But they didn't tell him how long this might take. It did send texts when each item was dispatched.

Mr A contacted NatWest on 14 October 2017 as he wanted to know when to expect his card and PIN. It was during this call he was told that his card had been used and there had been five cash withdrawals totalling £1,230.00. Mr A didn't recognise these withdrawals and he said he hadn't received his card and PIN. NatWest cancelled his card during this call. He then complained to NatWest when his fraud claim was declined and his account closed.

Below is a list of the relevant transactions:

Date	Time	Place/location	Type of transaction	Amount
05/10/17	N/A	Hammersmith Branch	Account opening & Deposit	£1,700
09/10/17	13:48	Putney High street	ATM withdrawal	£240
10/10/17	12:05	High street, SW15	ATM balance enquiry	
10/10/17	12:05	High street, SW15	ATM withdrawal	£250
11/10/17	12:54	Wimbledon	ATM withdrawal	£240
12/10/17	14:01	Wimbledon	ATM balance enquiry	
12/10/17	14:01	Wimbledon	ATM withdrawal	£250
13/10/17	11:56	Putney High street	ATM balance enquiry	
13/10/17	11:56	Putney High street	ATM withdrawal	£250
14/07/17		Mr A called NatWest	Card cancelled	
16/10/17	18:29	unknown	Attempted ATM withdrawal	
				<i>Total £1,230</i>

NatWest said it wouldn't refund the transactions to Mr A as it believed it had sent the card and PIN to his correct address and set his expectations about when he should receive these. It said it sent him texts to confirm the card and PIN had been dispatched. So, it felt it was unclear why Mr A hadn't contacted the bank sooner to say his card and PIN hadn't been received. It also said the card was sent in disguised mail so it was unclear how a third party would have been able to intercept this and the PIN. They said there were no further attempts to use the card after it was blocked and the transactions did not fit a typical pattern of fraud. NatWest said it closed Mr A's account in line with the personal account terms and conditions.

Mr A told us:

- he hadn't received the card or PIN and so it wasn't him who made the withdrawals;
- he'd been to the police about this and they had given him a crime reference number (and he provided us with that number);
- if NatWest checked the CCTV footage it would show it wasn't him making the withdrawals;
- he never activated the card as he didn't receive it; and

- he was using his non-UK account for spending during this time - he feels this shows he was not in possession of the NatWest card and PIN.

The investigator who reviewed the complaint thought it was most likely that the card and PIN had been received by Mr A, and that the transactions had been authorised by him. Mr A didn't agree with this and asked for an ombudsman to look into his concerns. He reiterated he did not make the transactions himself, nor did he authorise someone else to make them. As Mr A was unhappy with the outcome he asked for an ombudsman to review the complaint.

On review of the complaint we requested further information. NatWest said the new card was sent to Mr A pre-activated, with no further steps necessary to start using it. NatWest also provided more information about the texts it sent Mr A to inform him that his card and PIN had been dispatched. The information showed that the texts were sent to Mr A's correct mobile number on 6 October 2017. We haven't been provided with a template of what these texts would have said. But, NatWest says the first text would have said his PIN had been sent and the second text would have said his card was in the post.

We have also been provided with:

- physical copies of the disguised mail and the envelope in which the card and PIN were sent;
- Mr A's internet banking history - showing that he logged on for the first time on 6 October 2017 and that there were no further logons until 14 October 2017;
- a picture of Mr A's pigeon hole situated in the shared lobby of his building, where he says his post is delivered;
- statements from Mr A's non-UK account – showing his day to day spending in October 2017; and
- records of the card and PIN usage – showing an attempted cash withdrawal on 16 October 2017, after the card had been cancelled.

provisional findings

I have to determine this complaint by what I consider to be fair and reasonable in the circumstances. When considering what's fair and reasonable I've taken account of all the relevant information provided to me by both parties to the complaint and the relevant law and regulations, guidance, codes of practice and good industry practice.

And where there is a dispute about what happened, and the evidence is incomplete or contradictory, I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

relevant considerations

The disputed withdrawals were made in October 2017, so of particular relevance to my provisional decision about what is fair and reasonable in the circumstances of this complaint are the Payment Services Regulations 2009 (the PSRs 2009) which applied at that time.

The PSRs 2009

Among other things the PSRs 2009 say:

“Consent and withdrawal of consent

55.—(1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—
(a) the execution of the payment transaction; ...”

“Obligations of the payment service user in relation to payment instruments

“57.—(1) A payment service user to whom a payment instrument has been issued must—

- (a) use the payment instrument in accordance with the terms and conditions governing its issue and use; and*
- (b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.*

(2) The payment service user must on receiving a payment instrument take all reasonable steps to keep its personalised security features safe.”

“Obligations of the payment service provider in relation to payment instruments

“58 - (2) The payment service provider bears the risk of sending a payment instrument or any of its personalised security features to the payment service user.

“Evidence on authentication and execution of payment transactions

“60.—(1) Where a payment service user—

- (a) denies having authorised an executed payment transaction; or*
- (b) claims that a payment transaction has not been correctly executed,*

it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider’s accounts and not affected by a technical breakdown or some other deficiency.

(2) In paragraph (1) “authenticated” means the use of any procedure by which a payment service provider is able to verify the use of a specific payment instrument, including its personalised security features.

(3) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider is not in itself necessarily sufficient to prove either that—

- (a) the payment transaction was authorised by the payer; or*
- (b) the payer acted fraudulently or failed with intent or gross negligence to comply with regulation 57.”*

“Payment service provider’s liability for unauthorised payment transactions

“61. Subject to regulations 59 [Notification of unauthorised or incorrectly executed payment transactions] and 60, where an executed payment transaction was not authorised in accordance with regulation 55, the payment service provider must immediately—

- (a) refund the amount of the unauthorised payment transaction to the payer; and*
- (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place.”*

“Payer’s liability for unauthorised payment transaction

“62.—(1) Subject to paragraphs (2) ..., the payer is liable up to a maximum of £50 for any losses incurred in respect of unauthorised payment transactions arising—

- (a) from the use of a lost or stolen payment instrument; or*
- (b) where the payer has failed to keep the personalised security features of the payment instrument safe, from the misappropriation of the payment instrument.*

(2) The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer—

- (a) has acted fraudulently; or*
- (b) has with intent or gross negligence failed to comply with regulation 57.”*

the Terms and Conditions for Mr A’s account

The account terms and conditions (at the time of the disputed transactions) say:

4.5 unauthorised or incorrect payments

4.5.5 where you have:

- (a) allowed another person to make payments (other than someone that we have agreed may be allowed to use your account); or*

(b) failed intentionally or with gross negligence, to keep your security details secret and a credit balance on your account is reduced by unauthorised payment(s), you will be responsible for all payments made in this way before you tell us that any transactions are unauthorised.

4.5.6 you will not be responsible for any unauthorised payments where:

(a) you have not yet received your security details; or

4.5.7 unless general terms 4.5.4 to 4.5.6 above apply, where your security details are lost or stolen or you do not keep them safe as you are obliged to do under this agreement, you may be responsible for unauthorised transactions, up to a maximum of £50. You will not be responsible for any unauthorised payment which is made after you told us that your security details are no longer safe.

So, the relevant considerations I have outlined above provide that unless a payment transaction is authorised then the bank has no authority to debit the customer's account. And the bank is generally liable to refund unauthorised transactions (subject to any provision in the account terms and conditions to make the account holder liable for up to £50) unless the account holder has acted fraudulently, or with intent or gross negligence failed to comply with their obligations in respect of the account's terms and conditions and their personal security details.

The relevant considerations also make it clear that whilst an account holder has an obligation to notify the bank without undue delay when they think their card and PIN are lost, the bank bears the risk of sending to the customer the card and PIN by post.

Taking these relevant considerations into account I think that there are two key questions for me to address. Firstly, did Mr A receive his card and PIN and authorise the transactions he disputes and, secondly, if I find that he didn't, did he comply with his obligation to notify NatWest without undue delay when he suspected that his card and PIN had been lost?

did Mr A receive his card and PIN and authorise the transactions he disputes?

I'm satisfied from the evidence NatWest has provided that whoever made the transactions had both the genuine card and PIN with no incorrect PIN attempts. I say this because NatWest has shown that the withdrawals were made and authenticated at ATMs, where the genuine chip in the card was read and the correct corresponding PIN was entered.

So I've gone on to consider the possible explanations for how the disputed transactions were made using the genuine card and PIN. These are that:

- Mr A received the card and PIN and used them to make the withdrawals;
- someone with Mr A's authority used his card and PIN to make the withdrawals; or
- someone was able to intercept Mr A's card and PIN and use them to make the withdrawals, without his authority or consent.

I've considered which I think is the most likely, taking into account NatWest's records and Mr A's description of events. I can't know for sure what occurred; it's a decision I must make on the balance of evidence. Having considered the evidence I think it's more likely than not that Mr A didn't make or authorise the withdrawals and I'll explain why.

NatWest has shown that it sent the card and PIN, for the new account, to Mr A's correct address in separate envelopes, dispatched on different days. The PIN was sent on 5 October 2017 by first class post and the card dispatched the following day on 6 October 2017. NatWest dispatched these from different locations, NatWest's internal notes suggest this could be anytime within three working days. Considering this it's possible the card and PIN could've arrived on the same day.

NatWest says that it sends the card in a disguised envelope in an effort to avoid mail interception. And it says it would be unrealistic to expect a fraudster to be able to identify the envelope containing the card and intercept it. I have seen physical copies of the envelope the PIN would have been sent in and the 'disguised mail' envelope holding the card. The envelope the PIN would have been sent in is a standard white envelope with a clear window for the address and a return to sender address on the back. The disguised mail holding the card is a blank envelope and NatWest says the address would be handwritten. NatWest has also provided the cardboard inlay which it says would make it difficult to feel there was a bank card inside. I have handled the envelope with the cardboard inlay and I can feel a card inside the envelope. The PIN is in an envelope which in my opinion is recognisable as being from a bank. So I don't agree with NatWest that it's unrealistic that a fraudster could have identified that the envelope contained a card and taken it with the PIN letter. I think it is possible and plausible.

With that in mind, I have seen a picture of Mr A's pigeon hole where each resident in his block of flats has their post delivered. The picture shows a set of open shelves without any locks or doors. Mr A says his block of flats has a single mailbox through which the mail is posted. Mr A has told me it is the residents, or the landlord, who sorts the post, when it is delivered in one bundle. They then place it in the residents' separate pigeon holes.

Mr A isn't aware of any other issues with his post. He has explained that he doesn't know the people living in the other flats well, but he has said that he has no reason to suspect that they've taken his post.

NatWest has said that the picture Mr A has provided may not be the entrance to his residence and it may not be his pigeon hole. NatWest hasn't given any further reason why it thinks that. But from what I've seen I have no reason to doubt this is Mr A's post pigeon hole.

Mr A has said he wasn't away for a prolonged period of time between when he opened the account and when he called NatWest on 14 October. But, he would have been at university at this time. So there would have been periods of time when any post he'd received would have remained in the communal area, on the open shelf, during the day until he got home

Considering all this I am persuaded that any number of people could have had access to Mr A's post. And someone could've taken his card and PIN without him knowing. I say this because the card and PIN could've arrived on the same day or close together and I think they could be identified and picked up by someone who has access to Mr A's post. Certainly if someone was able to identify one or the other, they could feasibly be on the lookout for the second piece of post. So, I think it's entirely possible that Mr A's card and PIN were intercepted without his knowledge and used by someone else without his authority or consent.

When weighing up whether that's what's most likely to have happened, I have also considered the pattern of withdrawals.

The withdrawals took place in areas not far from Mr A's address. NatWest has explained that the PIN was always entered correctly. I don't find this surprising as, I think it likely, the card and PIN were likely taken together.

The card was sent out pre-activated so there were no further security steps required before using the card. In particular there wasn't anything required from Mr A to confirm that he was the one who received and was using the card.

NatWest highlighted the pattern of withdrawals on Mr A's account as being inconsistent with how they would usually see a fraudster using an intercepted card and PIN. NatWest says that it would usually expect a fraudster to access as much money as possible very quickly. NatWest also says that all the withdrawals were under the daily limit and preceded by balance enquiries, which also doesn't suggest it was an opportunistic fraudster.

The pattern of withdrawals, in isolation, doesn't persuade me that they were carried out or otherwise authorised by Mr A. Whilst it might be common for a fraudster to try and access as much money as possible as soon as they can, fraudulent transactions can take different forms and arise in wholly different circumstances.

NatWest also said the withdrawals stopped after Mr A contacted them on 14 October 2017; suggesting that the person withdrawing the cash knew that the card had been cancelled. But on review of different records, provided by NatWest, I can see there was an attempted transaction two days after the account had been blocked. In my view, this ongoing attempted use could well represent the activity of a fraudster who's monitoring the account and trying to obtain more money.

When taken together, I think that the opportunity for interception of the card and PIN and the attempted use of the card after it had been cancelled, point to someone other than Mr A having it in their possession without his knowledge. And, on balance, I'm minded to conclude that Mr A did not authorise the transactions he disputes.

did Mr A comply with his obligation to notify NatWest without undue delay when he suspected that his card and PIN had been lost?

Mr A opened the account on 5 October 2017, set up and used online banking on 6 October 2017 and then contacted NatWest to query where his card and PIN were on 14 October 2017.

NatWest says this is unusual and if Mr A had reported the missing card sooner it could've prevented some of the transactions. NatWest has said Mr A was also sent text alerts informing him when his card and PIN had been dispatched. It says he should have known when to expect them and, when he didn't receive them after a few days, his concern should have been raised and he should have contacted it much sooner. The texts are no

longer available and NatWest doesn't know what the content of the text messages or if they gave any timeframes for when to expect delivery of the card and PIN.

I've considered the timeframe between Mr A opening the account and then querying receipt of the card and PIN. Mr A waited a full working week before getting in touch with the bank. I'm not persuaded Mr A was told when to expect the card and PIN and he was new to the country so he says he was unaware of how long an item of post typically takes to be delivered. Weighing this up I don't think he waited an unreasonable amount of time before getting back in touch with NatWest, particularly as he had access to other funds in the meantime, meaning this account and the corresponding card and PIN weren't a priority for Mr A to be able to continue his day to day living.

I'm also satisfied, based on these circumstances, that Mr A met his obligations to notify the bank without undue delay on becoming aware of the loss. The timeframe in which Mr A queried the whereabouts of his card and PIN doesn't seem unreasonable to me, in the circumstances. Nor does it lead me to conclude that it's more likely than not it was him that carried out or authorised the withdrawals.

other considerations

Mr A has explained he was new to the UK and was using his non-UK bank account. I have seen statements from these accounts which show he was using this while he was waiting for his card and PIN from NatWest. This shows that Mr A had access to other funds at this time and was using these accounts for day to day spending.

Mr A says CCTV would show it wasn't him that made the withdrawals. NatWest hasn't obtained any CCTV of the withdrawals so I can't consider that evidence. Whilst CCTV might have been helpful here it wouldn't have helped in determining if the withdrawals were made by someone using the card and PIN with Mr A's authority. But I have been able to consider everything else in reaching a finding on that point.

in summary

Mr A can't show that he didn't make the transactions by demonstrating precisely where the card and PIN were intercepted and who by. But that isn't necessary; it is the bank that bears the risk of sending the card and PIN to Mr A and I think it's likely that the card and PIN were intercepted by someone other than Mr A.

The PSRs 2009 say that unless the payment transaction is authorised then the bank has no authority to debit the customer's account. On balance, considering all the evidence, I'm not persuaded that Mr A received the card and PIN or that he made or otherwise authorised the disputed withdrawals. I've also seen no evidence that would lead me to conclude that Mr A was acting fraudulently. I say that because:

- the card and PIN could've arrived on the same day or close together;
- the card is recognisable in the envelope NatWest has provided;
- the PIN letter was not disguised and could have been picked up before, after or at the same time as the card;
- Mr A's post is open for others to access without him knowing what might be taken;
- the timeframe in which Mr A reported this missing card isn't unreasonable;
- the pattern of withdrawals is inconclusive to determine who carried them out but there was attempted use after it was blocked suggesting it was someone who didn't know the card had been blocked; and
- the card didn't need to be pre-activated so anyone could've started using the card as soon as they had it with the PIN.

Given my provisional finding that the card and PIN weren't received by Mr A and section 4.5.6 (a) of the account terms which says that Mr A isn't liable for unauthorised payments where he didn't receive the security details, NatWest should refund the transactions. NatWest is entitled to hold Mr A liable for up to £50 as this is provided for in the account terms.

account closure

NatWest relied on its terms and conditions when closing the account, which it is entitled to do. But if it had considered Mr A's claim for the disputed transactions correctly then it might not have made the same decision to close Mr A's account.

trouble and upset

In making the decision not to refund Mr A for the disputed withdrawals and then close his account some trouble and upset was caused. Mr A says as well as the financial loss he suffered inconvenience, he was frustrated with

NatWest's lack of investigation into his concerns and said he felt the psychological effects; as a student he was already dealing with a great deal of stress. In light of this, I recommend that NatWest pay Mr A £300 in compensation to reflect the trouble and upset caused to him.

putting things right

In putting things right for Mr A, I propose National Westminster Bank Plc:

- refund the disputed transactions to the value of £1,230.00;
- adding 8% simple interest per annum from the date of the disputed transactions to the date of the settlement;
- in making the refund NatWest, in accordance with the terms and conditions applicable to Mr A's account, it's entitled to withhold up to £50, if it exercises this right, I consider that it would be fair and reasonable for it to inform Mr A of its decision to do so;
- remove any adverse markers from Mr A's credit file that were added by NatWest following its decision not to refund him the money and close his account; and
- pay Mr A £300 for the trouble and upset caused.

provisional decision

My provisional decision is that I am minded to uphold this complaint against National Westminster Bank Plc.

I'll give both parties a month to respond to provide any further comments or evidence before reviewing the matter again.

Sophia Smith
ombudsman