

Complaint

Miss C complains that National Westminster Bank Plc won't refund transactions on her savings account which she says she didn't make.

Background

The background to this complaint is set out in my provisional decision dated 8 January 2020, a copy of which is attached.

I thought NatWest should refund the transactions which Miss C disputed. I thought there had been an opportunity for a third party to obtain Miss C's debit card and PIN and I explained why I thought it was unlikely Miss C had carried out the transactions or authorised someone else to do so.

I also considered whether Miss C had been grossly negligent. But, overall, I thought that, whilst she should have told NatWest she'd moved house, she didn't deliberately not tell it. And so I didn't think her failure to do so was unreasonable.

NatWest agreed with my provisional decision and Miss C had nothing further to add.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

NatWest has agreed with my provisional decision, so I have nothing to add to my earlier conclusions.

My final decision

My final decision is that National Westminster Bank Plc should refund Miss C £430.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 March 2020.

Elizabeth Dawes
Ombudsman

Copy of my provisional decision

Complaint

Miss C complains that National Westminster Bank Plc won't refund transactions on her savings account which she says she didn't make.

Background

In September 2017, Miss C applied online for a (second) current account with NatWest. She says she wanted to use the account for savings, so she didn't need a debit card.

In early March 2018 she noticed they'd been two ATM withdrawals. She phoned the bank to tell it she didn't authorise these transactions and to ask the bank to credit her account with the amount that had been withdrawn - £430.

NatWest said Miss C had applied using her old address and that she'd asked for a debit card. It sent the debit card and PIN to that address. NatWest thought the transactions didn't match a typical fraud pattern – they were carried out five months after the card and PIN were sent, there were no point of sale transactions and no attempts to exceed the card limit. Following her complaint, NatWest did pay Miss C £50 as it acknowledged it had taken a long time to tell her the outcome of its investigation.

Our investigator's conclusion

Our investigator didn't recommend that the complaint should be upheld. She concluded that:

- There wasn't a point of compromise in which the card and PIN were obtained by a known or unknown third party, so it's likely Miss C received the card and PIN.
- Miss C uses online banking at least every other day, but didn't use online banking during the period that the withdrawals were made.
- No-one else knew about her account, or that they'd been a £400 credit in January 2018. So Miss C must have used her old address for the account application, knowing that she could access the post there.

Miss C didn't agree saying, in summary, that:

- She thought she'd used her current address when she applied for the account and she thought she'd opted not to receive a debit card.
- She disagrees that there was no point of compromise in which the card and PIN were obtained by a third party. Whilst it may seem unlikely that someone waited five months before trying to take money out of her account, that doesn't mean it wasn't possible.
- She accesses online banking regularly, but randomly.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Were the disputed transactions authorised by Miss C?

I'm satisfied from the evidence NatWest has provided that whoever made the transactions had both Miss C's genuine card and PIN.

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:

- Miss C used the card and PIN to make the transactions.
- A third party used Miss C's card and PIN with her authority.
- A third party was able to obtain Miss C's card and PIN and use them to make the transactions without her authority or consent.

I've considered which I think is the most likely. I can't be sure exactly what happened; it's a decision I make on the balance of probabilities. Having considered this carefully, I think it's more likely than not that Miss C didn't make or authorise the transactions. I'll explain why.

Miss C didn't tell NatWest that she'd moved house and I will comment on this further later. This meant NatWest sent the debit card and PIN for the account to the address it held in its records. This was the address Miss C had moved out of in June 2016.

Miss C says she didn't want a debit card for the account because she wanted to use it for saving money, and she could easily transfer money to and from her existing, and main, current account. And she says she feels sure she opted out of receiving a debit card. I think this is plausible. I can see she used the account as she intended, generally crediting £10 a month except in January 2018 when she credited the account with £400 that she wanted to set aside for a holiday.

The summary of the application provided by NatWest shows that a debit card was included in the application. It's not clear whether this was automatically included or whether there was an option to opt out. In either case, I think Miss C didn't want a debit card, knew she wouldn't use it, and didn't realise she hadn't opted out of having one.

NatWest sent the debit card and PIN to Miss C's old address. It says Miss C was signed up to receive text alerts and should have received a message to say that a card and PIN had been sent. If this was the case, I would have expected Miss C to query why she'd been sent one and then to query when it wasn't received. I've not seen evidence that a text alert was sent and I think it's likely one wasn't sent, or if it was it wasn't received by Miss C – because she didn't contact the bank.

Miss C told us her old address was a rented flat. She says the post for each flat was kept in a locked post box. There are a number of people who could have had access to that locked box – Miss C, if she'd kept the key; the landlord; any tenants occupying the flat since Miss C moved out more than a year earlier; and possibly any individuals responsible for maintenance at the property.

The card and PIN were sent in September 2017; the card wasn't used until the end of February 2018. I agree with NatWest that this is unusual – it would be more likely that a fraudster would try to use the card straight away. But in this case it appears an individual waited five months. During most of that time, had the individual tried to use the card, the balance would not have been more than £30. But in January 2018 Miss C had credited the account with £400. So, unless the transactions were carried out by Miss C, it seems very coincidental that there was no card use until after that large deposit.

But I have thought about what might have happened here, and what is most likely to have happened. As noted above, the debit card and PIN could have ended up in the hands of a number of individuals. I think it's quite possible that the envelopes went either unnoticed or unopened for a period of time. Miss C hadn't left a forwarding address; perhaps the new occupier simply left the envelopes in case Miss C came back for them. Perhaps they were taken out of the box – as they weren't addressed to the current occupier – and left elsewhere. Or perhaps they were left in the box and a new tenant decided to open them.

I can't say exactly what happened. But I think it's likely that the card and PIN were received at the old address and were left unopened for five months before an unknown third party opened them and decided to use the card.

The card was used as follows:

<i>Date</i>	<i>Time</i>	<i>Transaction</i>	<i>Amount</i>
27 February	02.22am	Balance Enquiry	-
27 February	02.23am	Balance Enquiry	-
27 February	02.23am	ATM Withdrawal	£300.00
28 February	03.29am	Balance Enquiry	-
28 February	03.47am	Balance Enquiry	-
28 February	03.47am	ATM Withdrawal	£130.00

There was one final attempted use of the card in an ATM on 3 March, but this was after Miss C had reported the transactions and the card had been cancelled. So the machine kept the card.

If these transactions were authorised by Miss C, there wouldn't have been any need for a balance enquiry. The person who carried out these transactions withdrew as much cash as they could on day one – up to the daily ATM limit. They then returned the following day to withdraw the remaining money. There were no point of sale transactions – which typically a fraudster would use to try to gain as much benefit in as short a time as possible. But perhaps this individual felt they'd be less likely to be caught using a cash machine. Bearing in mind the circumstances in which they would have come into possession of the card, I think it's likely that these transactions were carried out by an opportunist who was looking to benefit from having obtained the card as quickly as possible.

If it had been Miss C using the card, I wouldn't have expected her to attempt to use it after she knew it had been cancelled.

Our investigator said Miss C didn't log on to online banking during the time of these disputed transactions and that this was out of character. I've looked at Miss C's online banking activity and I can see that she was a frequent user. Most usually she would log on at least every other day. But she didn't log on on 3 February or 4 February. But this wasn't the only occasion when she didn't log on every day – there were three days towards the end of the previous month when she didn't log on, and three occasions in the two months before that when there were two day gaps. So I don't find her failure to log on for two days was unusual or makes a difference to the overall outcome here.

So, overall and on balance, I don't think it's likely that Miss C carried out the transactions, or that she consented to someone else doing so.

Did Miss C fail with intent or gross negligence to comply with the obligations set out in Regulation 57 of the Payment Services Regulations 2009?

Miss C failed to tell NatWest that she moved house in June 2016. She didn't give NatWest her new address until March 2018. So I need to consider if she acted purposefully or with gross negligence here. Clearly her failure to tell NatWest she moved, led to her account being compromised. So she failed to prevent mis-use of her account. But I don't find that she acted intentionally. Miss C carried out all her banking online, so it's not unreasonable that she forgot to tell the bank she'd moved.

When she opened her new current account, I don't think she gave NatWest her old address. I think the existing information the bank held in its records was automatically used to open the account. I can't say whether Miss C would have been presented with this information and should have noticed. But, on balance, I think she would have contacted the bank during or after she made the application if she had realised it was still using her old address.

So although Miss C *should* have told NatWest she'd moved house, I don't think she deliberately *didn't* tell it, and I don't think her failure to do so was unreasonable

In the circumstances, I think NatWest should refund the disputed transactions.

My provisional decision

My provisional decision is that National Westminster Bank Plc should refund £430 to Miss C.

Elizabeth Dawes
Ombudsman