

complaint

Mr V complains that National Westminster Bank Plc has refused to credit the value of transactions to his account that he denies making or otherwise authorising.

background

On 11 September 2014, 33 transactions were carried out using Mr V's card and card details totalling £9,391.85. 11 of the transactions, totalling £3,800.00, were made online using the card details, mainly by way of a single account with a gambling company which had Mr V's name and personal details registered.

The remaining transactions, apart from one cash machine withdrawal, totalling £5,591.85, were carried out using Mr V's card and personal identification number ("PIN") in a betting shop. NatWest has refunded the online transactions, but not the ones made use of 'chip and PIN'.

Mr V says that his wallet was stolen containing his card and driving licence. The PIN was not written down but it was created using digits from his date of birth and he speculates that a fraudster has guessed the number. He says the online gambling account details were also contained in his wallet.

Mr V discovered the disputed transactions on 12 September and called the bank to cancel his card.

Nat West agreed to credit Mr V's account with the value of the online transactions but not the 'chip and PIN' transactions. It identified that Mr V's account had been used before for betting, and they could not see how the 'chip and PIN' transactions were unauthorised.

Our adjudicator agreed that, on balance, the 'chip and PIN' transactions could not be said to be unauthorised. The betting shop had indeed been used by Mr V before, including on the day before the disputed transactions took place. Additionally, Mr V's own online gambling account – active since May 2014 - was used, once whoever made the disputed transactions in the betting shop had finished in that shop. And the adjudicator did not consider that the pattern of the total disputed activity, suggested that the disputed transactions were likely to have been carried out by a fraudster.

There was also no clear and persuasive explanation as to how the PIN was obtained. Mr V had said it would have been possible to have been guessed but if it was, it was guessed correctly first time and this seemed unlikely to the adjudicator.

In conclusion, the adjudicator did not recommend that the bank needed to credit Mr V's account with the value of the disputed transactions that it had previously debited the value of and which were still in dispute.

Mr V has asked that his complaint be reviewed by an ombudsman. He maintains that he did not make any of the disputed transactions; it is not appropriate that the bank has refunded the value of some transactions but not others; and CCTV footage would show that he had not made the transactions.

findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having done so, I agree with the adjudicator's conclusions, for broadly the same reasons.

It is not disputed that it was the genuine card that was used to make the transactions – Mr V has explained how it was stolen along with his wallet. But the correct PIN was entered at the time that the disputed transactions were made and without any error being made. And I am not persuaded that Mr V has provided a compelling explanation of how a fraudster could have known the PIN - whether by accident or deliberately - such that they were able to make the transactions.

Mr V says that it must have been guessed by use of the other contents of the wallet – but that would still require a fraudster creating the PIN in the same format, based on Mr V's date of birth, as Mr V had used and this is by no means certain to have happened correctly first time.

I also find that the pattern of the transactions was such that it seems unlikely to have been a fraudster undertaking them. As the adjudicator suggested, it seems unlikely that a fraudster – having gained illicit access to his account – would use Mr V's genuine online gambling account. And it is something of a coincidence that a fraudster found Mr V's card and attended the same betting shop as Mr V did previously.

And as regards to the issue of CCTV, I agree with what the adjudicator has said. That would only show the person that made the transactions – it would not explain the basis on which an unknown fraudster, even if I was to assume it was not Mr V, was able to make them.

I recognise that Mr V is frustrated with the conclusions that the adjudicator came to. I note the strength with which Mr V presents his argument that he has been a victim of fraud and did not make the transactions. I also appreciate that Mr V will be concerned that some transactions have been refunded and not others. But, I cannot require the bank to refund the value of the 'chip and PIN' transactions, just because it has refunded the online transactions. I have to consider whether I can fairly and reasonably require the bank to refund the 'chip and PIN' transactions based on all the evidence available.

And ultimately, 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.

In this matter, I am not sufficiently persuaded that it is more likely that a fraudster obtained Mr V's card; guessed his PIN correctly - first time; used Mr V's genuine online gambling account to misuse Mr V's card before coincidentally attending the same betting shop as Mr V had used previously; than Mr V either made the transactions, or they were made with his agreement in some way.

Of course, I will never know with certainty what happened. And I have taken into account what Mr V says about him not making them. But I also have to take account of the wider circumstances and I have to conclude whether I can fairly and reasonably say that the bank has acted incorrectly in holding Mr V liable for the transactions based on the evidence available. And I do not consider that I can.

I cannot fairly and reasonably say that Mr V was a victim of fraud and he did not make or otherwise authorise the transactions. As such, I do not require NatWest to refund to Mr V the value of those transactions, not yet refunded, on the basis that he should not have been held liable for them.

In light of what I have said, I make no award against, or direction to, the bank.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr V to accept or reject my decision before 19 January 2015.

Ray Neighbour
ombudsman