

## **complaint**

Mr N has complained Nationwide Building Society won't refund account transactions that he didn't make in September and October 2017.

## **background**

Mr N opened an account with Nationwide in May 2017 (he'd previously had accounts with Nationwide that had been closed). He got a debit card for his account. In October he told them there were transactions on his account he'd not made or authorised. From 25 September to 9 October these totalled £3,676.78. Some of these were cash withdrawals or purchases using Mr N's card and PIN whilst some were online transactions.

After investigation, Nationwide wouldn't agree to refund the transactions. Mr N had admitted allowing his daughter to use his card and PIN although those transactions weren't amongst those he disputed. They felt this was enough to show Mr N had been grossly negligent with his card and PIN and had given apparent authority to his daughter to use his card. Nationwide were later more aware of Mr N's vulnerabilities and had taken steps to help him when using his account.

Mr N was unhappy with this outcome and brought his complaint to the ombudsman service. After a detailed investigation, our investigator felt Mr N had either made these transactions himself or allowed someone else to use his card. What he knew about Mr N's previous account usage suggested that the online gambling transactions had been carried out by him.

Mr N disagreed with this. He's asked an ombudsman to consider his complaint.

I completed a provisional decision on 20 January 2020. Like our investigator I wasn't going to ask Nationwide to refund Mr N. But taking Mr N's health into account, I wanted to give him an opportunity to review why I was coming to this conclusion.

Mr N phoned our service to say he didn't accept the outcome. He had a few points to re-emphasise:

- I'd not taken into account how limiting his mental health issues were. He was unable to leave home and therefore couldn't have made the disputed transactions.
- Nationwide should have stopped the transactions or obtained CCTV evidence to show who'd made these transactions.
- Nationwide had refunded £600 for other disputed transactions. He'd lost a further £3,000 but didn't have any faith in us being able to help him.
- He couldn't use or read things on a computer.

Nationwide didn't respond to the provisional decision.

I now have all I need to complete my final decision.

## **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 not seen anything which has made me reach a different conclusion than I did when writing the provisional decision. The following is similar to my provisional decision for that reason.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply – so for example whether there was any gross negligence in looking after the card and PIN. I've considered this aspect when reviewing this case. Firstly 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 reviewed the evidence provided to us by Mr N, including what he originally told Nationwide and their information about the transactions and how they took place. This also includes what we know about Mr N's bank account usage from previous complaints he's brought to this service.

I'm looking at the cash machine withdrawals and the online transactions separately.

#### *disputed cash machine withdrawals*

The disputed transactions start on 3 October 2017. Over the next week there are seven disputed transactions. Four of these are £500 withdrawals at cash machines on 3, 4, 8, and 9 October. These all take place at the same cash machine, which isn't far from Mr N. This is also a cash machine Mr N has used previously.

There are also three withdrawals at a local casino for £500, £210 and £700 on 3 and 5 October. The latter two on 5 October took place at an early hour in the morning.

Mr N reported his card lost on 9 October. There were no further attempts made to withdraw cash with the physical card after that date.

On 24 September before any of the disputed transactions, Mr N allowed his two daughters to use his debit card and PIN. He very specifically allowed them to take out £100 each. On that day there were four actual cash withdrawals (£140, £200 (plus £1.85 cash machine fee), £100 and £50). There were also four attempts to withdraw £200 made before the last two withdrawals. These were all declined by Nationwide as the daily withdrawal limit had been reached on the card.

Mr N accepts that his daughters took out more than he'd allowed them to withdraw. It's also generally accepted that Mr N's daughters more than likely knew where he kept his card and could have quite easily recalled his PIN, if they had access to his card.

Mr N has told us his daughters were coming to live with him. Nationwide has pointed out from October onwards there are child tax credits and child benefit payments being made into Mr N's account. These hadn't taken place historically. This would support Mr N's story.

Nationwide has therefore concluded that Mr N's daughters used his card for these disputed transactions. Nationwide has suggested that as Mr N had given his card and PIN to his daughter previously, he was grossly negligent. But in fact I can see no evidence – apart from supposition – that Mr N's daughters used his card for these seven disputed transactions 10 days later. And it's clear that Mr N has completely rejected this hypothesis.

Mr N has told us that he thinks someone – who'd managed to get his trust – came into his house and took his card. As he has complex health issues, he tended to keep his card and

PIN in close proximity to each other in his kitchen. He thinks this is how these transactions happened. He's also told us his health means he doesn't get around very much and has limited mobility. Although he's also told us he drives to his mum's. I think it's fair to say some of Mr N's testimony has been contradictory.

His card use historically has also suggested that he regularly uses his card – often for contactless transactions at a local supermarket. This is the same place where the cash machine for the disputed cash withdrawals is located.

In a review of all the evidence I've done, I think it's more than likely Mr N made these transactions himself. I say this predominantly because of the following:

- There no evidence his daughters were using his card or were even around at the time the card was being used for these disputed transactions.
- The locations of the cash machine withdrawals match the use Mr N has made of his card previously.
- Mr N does get around regularly and is able to use his card independently (according to what I can see from the transaction history), although I note he has disputed this.
- I've considered Mr N's evidence that a third party stole his card and used it. The usage doesn't support this. As well as withdrawals of cash as soon as the card was obtained I would expect to see other purchases and attempted card use.
- Mr N's cash withdrawal limit was £500 a day. All the cash machine withdrawals were for that amount. I'd have expected a complete stranger to have tried a different amount first off as they wouldn't have known what Mr N's withdrawal limit was.
- I accept balance checks were carried out before the first disputed usage which is what we often see when a thief is using a card. But there weren't any of these before the withdrawals on 8 and 9 October. I'd certainly have expected to see balance checks if Mr N's card was being used by a stranger – after a few days of not using it – as they'd not have known what Mr N's other financial commitments were. Or what he may have used his account for in the interim.
- The withdrawals of cash in the casino were not in all likelihood done at a standard cash machine. Cash machines in casinos mostly charge for withdrawals. None of these three transactions attracted a fee. Some casinos have booths where you can withdraw cash over your daily withdrawal limit – like the £700 transaction in all likelihood was. They also often use additional ID to make sure the correct card owner is making the withdrawal. We don't have any evidence here about what that may have been but I wouldn't be surprised if some additional ID checks were carried out. This again would suggest these were done by Mr N. I note Mr N has told us he's not been inside a casino but as I say his evidence has been contradictory.
- There was no attempt to use the physical card after it was cancelled. If someone other than Mr N was using it, I'd have expected to see this.

#### *disputed online transactions*

There are online transactions dating from 26 September to 9 October that are disputed. The first set are all being carried out with mobile phone providers. £25.02 is disputed and this took place over five different transactions.

Our investigator contacted the retail outlet behind some of these. Their evidence confirmed they were more likely carrying out credit checks into Mr N before deciding whether to provide a mobile phone. At the same time someone signed up to a credit check using Mr N's debit card.

Then on 29 and 30 September and 9 October there are a number of transactions carried out on online gambling sites. Mr N disputed all of these.

Our investigator contacted all the different gambling sites. These confirmed they had accounts in Mr N's name. For at least one of these sites, they also got a copy of Mr N's driving licence to verify their customer.

Mr N told us he believed his driving licence had been stolen in February 2017 but only after we mentioned this site had confirmed they'd accepted it. He also told us he didn't use online gambling sites.

However I've looked at Mr N's Nationwide account. I can see there are other gambling transactions on his account which he hasn't disputed.

Mr N had brought complaints to our service before. At this time Mr N was using a computer although he more recently told us he didn't use one.

But I can also see large credits to Mr N's account from payment schemes operating online marketplaces around the same time. Mr N has told us he gets his brother to help sell things online. These two payments of £1,086.55 and £1,199.90 get credited just before a lot of the large disputed expenditure (both online and using the physical card) takes place. In fact without this money these transactions would have been declined in all likelihood.

Mr N has told us he believed these transactions were being done by the person who stole his card. I don't think this is likely for the following reasons.

Firstly Mr N told Nationwide his card was more likely stolen in October and perhaps as late as 8 October. Even if I discount Mr N's recollection to allow for his health issues, this still means a lot of the disputed transactions happened in September when I'm sure Mr N still had his card.

Mr N had accounts with most of these gambling sites. One of these at least had been opened months before the dispute. They would all have had login requirements to allow someone to access these accounts. So an unknown third party would have had to know who Mr N used for his gambling as well as enough login information to access the sites. This would be apart from being able to access Mr N's debit card. This would entail quite a detailed fraud.

The other thing about gambling websites is that all winnings are credited back to the card made to carry out the transactions in the first place. This tends to discourage fraud as a fraudster can only in certain circumstances get hold of what's been won.

Based on the evidence I've seen, I believe Mr N authorised all of the online transactions as well.

I know this will be a disappointment to Mr N. I appreciate he has complex health needs and I've taken these into account when considering what's happened here. But overall I don't think Nationwide did anything wrong in rejecting Mr N's fraud claim.

If Mr N believes he's had further disputed transactions – which aren't the ones referred to in this decision – he should raise these with Nationwide who will investigate this for him.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 5 March 2020.

Sandra Quinn  
**ombudsman**