

complaint

The executor of the estate of the late Mr H complains that National Westminster Bank Plc won't refund payments he didn't authorise.

background

The executor is the sister of the late Mr H. She says that before he died his stepdaughters made withdrawals from his account that she disputes he authorised. Mr H had given them his card and PIN to make essential payments – for example for shopping. But there were multiple cash point withdrawals and in September 2018, just before he died a payment for gambling. She wants the money refunded to his estate and for all the payments to be considered – not just the ones in the 13 months before this was reported.

NatWest says that the payments were made using the genuine card and the correct PIN. Under the terms and conditions of the account Mr H shouldn't have disclosed his security information. As he had permitted payments using his card any dispute about some of them was a civil matter and it said it wouldn't be refunding the payments.

Our investigator didn't recommend that the complaint be upheld. He said that he was considering 124 cash point withdrawals totalling over £15,300 and the executor had also raised a dispute about nine payments to a convenience store and the one payment for gambling of £61. The total in dispute was just under £16,500 covering payments between 12 August 2017 and 3 September 2018. This was the period that NatWest was required to consider.

He took account of the increased level of payments on the account highlighted by the executor. But he said that without testimony from Mr H there was no way to determine which transactions were authorised and which were not. And he wasn't able to say that Mr H hadn't consented to these payments including allowing his stepdaughters to carry out the gambling payment. Statements were being sent monthly and none of the payments triggered the fraud detection system at NatWest. We weren't looking here at a complaint NatWest had settled for a fraudulent cheque on his account for £5,000.

The executor didn't agree and wanted the complaint to be reviewed.

my findings

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

I need to take into account the Payment Services Regulations 2009 and 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So it's not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Mr H wouldn't generally be responsible for them.

So I will be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of what happened to the card and PIN used for these payments?
- Did Mr H authorise all these payments on the account by allowing someone else to use the card as NatWest says?

The payments were made when the chip on the genuine card was read and the correct PIN entered. So I'm satisfied these were authenticated. NatWest has looked at payments over 13 months as required by the PSR and the terms and conditions of the account. I don't think that creates any unfairness here for reasons I'll explain below.

Mr H's sister says that he didn't consent to these payments for a number of reasons. She says he was careful with money – and that's why for example he wouldn't have spent so much in a more expensive convenience store. His health was deteriorating and he spent periods in hospital. He had no need for this cash and his pattern of spending compared to a trend since 2013 was much higher towards the end of his life. That was a time when he wouldn't have needed to spend so much. Her son has confronted the stepdaughters who have denied any 'foul play' and she hadn't reported this to police as she was waiting for the outcome of this complaint.

I understand all the reasons Mr H's sister has put forward here. I can see the inferences she has drawn from the pattern of spending and that she has made a plausible case. The difficulty is that she has no evidence to show what the actual arrangement was between Mr H and his stepdaughters – and that's also assuming they made all these payments. As far as I can see her case is based on her testimony and her detailed analysis of the bank statements - including of particular periods when more money was taken out. But Mr H clearly trusted his stepdaughters such that he gave them access to use the card on his account. I just don't have a way of fairly determining the limit of that access and identifying any payments that he didn't authorise.

As the investigator has said Mr H was receiving statements. There is nothing to suggest NatWest was told of any particular vulnerability such that he wasn't in a position to manage his own finances. NatWest is responsible for setting its own fraud detection processes. I can't fairly say that NatWest ought to have identified these payments as fraudulent and that they must have been. Its systems didn't pick them up as suspicious. If I was to find they were fraudulent then I'd be asking it to refund them in any case.

All these points apply whether I'm looking at 13 months or a longer period. The executor referred to a cheque that had been refunded. We'd been asked by her not to look at this complaint as it was settled so we don't have the evidence about it. But I just want to say though that my understanding is that the signature on the cheque didn't match that of the genuine one for Mr H. That's very different from here when all the payments as I say were authenticated with the correct security information. And I can't draw any inferences about that claim being upheld. I'm looking at the circumstances here.

So I know I'm going to disappoint the executor deeply when I say that I don't have a basis to ask NatWest to do anything further. I don't doubt her genuine belief as Mr H's sister that these were fraudulent payments. But I am unable fairly to make that finding here.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the executor of the estate of the late Mr H to accept or reject my decision before 17 May 2020.

Michael Crewe
ombudsman