complaint

Mr T complains that National Westminster Bank Plc won't refund £35,000 of payments made from his account to an online gambling website, that he says he didn't authorise. Mr T also complains that NatWest blocked and closed his account. He says this caused him problems paying bills and affected his credit rating. Mr T wants NatWest to refund the disputed transactions and redress for the way they handled the closure of his account.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 23 July 2019 – a copy of which is attached and forms part of this final decision

In my provisional decision I explained why of thought this complaint should be upheld in part. I invited both parties to send any additional evidence or comments they wished to make before I made my final decision.

NatWest responded setting out that it accepts my provisional decision. Mr T didn't respond.

my findings

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

As Mr T and NatWest haven't made any more comments, or offered any more evidence, my findings about this complaint haven't changed.

It follows that I don't uphold Mr T's complaint about the disputed transactions**.** I'm not persuaded that the gambling transactions were carried out by someone other than Mr T or by someone without his authority. And so I don't recommend that NatWest needs to do anything further or refund the transactions he disputes. I also don't uphold Mr T's complaint about NatWest closing his account.

I uphold Mr T's complaint about the return of his funds. NatWest decided to block and close Mr T's account on 28 December 2017, which meant from this date Mr T wasn't able to access the money in his account. But NatWest didn't release Mr T's balance to him until 7 February 2018.

I've listened to several phone calls Mr T made to NatWest to try and find out what was happening. In particular calls he made in January 2018, when NatWest told him they were reviewing his account and to call back in a 'couple of weeks.' But NatWest didn't ask Mr T for any information about his account. During this call Mr T told NatWest he had no money to pay his bills including his car tax, car insurance and rent. Mr T did as NatWest asked and called back again. However, he wasn't told when he could have his money released.

Prior to issuing my provisional decision I asked NatWest for an explanation why it took them until February 2018 to release Mr T's money to him. But I haven't been provided with any information except that at the time NatWest were unable to transfer Mr T's balance to another account.

I can see that this issue has had an impact on Mr T and caused him trouble and upset. I say this because Mr T has provided us with evidence that he was unable to pay his bills. Mr T's bank account was frozen for just over six weeks. That would have had an impact on almost anyone. In this case I don't think NatWest did enough to listen to what Mr T was telling them or let Mr T know what evidence he could provide about the money in his account so that it could be released. And I can't see they took any steps to move things forward until February 2018.

Overall, I consider that the circumstances here are such that Mr T is entitled to some compensation for trouble and upset. So I think NatWest should pay Mr T £350 compensation for what took place. I think that amount fairly reflects the level of distress and inconvenience caused to him.

my final decision

For the reasons I've explained, I partly uphold this complaint. And direct National Westminster Bank Plc to pay Mr T £350 compensation for the trouble and upset caused by taking too long to return his money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 September 2019.

Sharon Kerrison
ombudsman

Copy provision decision of 23 July 2019

complaint

Mr T complains that National Westminster Bank Plc won't refund £35,000 of payments made from his account to an online gambling website, that he says he didn't authorise. Mr T also complains that NatWest blocked and closed his account. He says this caused him problems paying bills and affected his credit rating. Mr T wants NatWest to refund the disputed transactions and redress for the way they handled the closure of his account.

background

Mr T had a current account with NatWest. Mr T has explained that on 2 December 2017, he went to a barber shop to get his hair cut. Whilst he was there his coat was put in the shop's cloakroom. Mr T says that his mobile phone and wallet containing his bank card were inside his coat pocket.

Mr T says his phone was logged into a betting site, which he regularly used to bet on sporting events. At the end of his appointment, Mr T says staff returned his coat to him. He then paid and left the shop. Around thirty minutes after leaving the shop, Mr T says he realised his mobile phone was missing. So he went back to the barbers to see if he'd left it there. When he got back to the shop, his phone was handed to him from behind the shop's reception desk.

Mr T says once he'd recovered his phone he noticed he'd received a number of text messages from NatWest asking him to confirm he'd authorised four recent transactions to the betting website. Mr T says he wasn't aware of the transactions and he replied to the text messages immediately to let NatWest know he hadn't authorised them.

The following timeline for what happened on 2 December 2017 has been compiled using the internet banking log for Mr T's account and the transaction history:

Date	Time/activity	Amount	Card ending	Device
02/12/2017	16:51 Someone logged into online banking via Mr T's NatWest Mobile banking app			NatWest Mobile banking app
02/12/2017	16:52 transaction to betting site	£6,000	5926	NatWest Mobile banking app
02/12/2017	16:56 Someone logged into online banking via Mr T's NatWest Mobile banking app			NatWest mobile banking app
02/12/2017	17:02 Someone logged into online banking via Mr T's NatWest Mobile banking app			NatWest mobile banking app
02/12/2017	17:03 transaction to betting site	£10,000	5926	NatWest Mobile banking app
02/12/2017	17:11 Someone logged into online banking via Mr T's NatWest Mobile banking app			NatWest Mobile banking app

02/12/2017	17:25 Someone logged into online banking via Mr T’s NatWest Mobile banking app			NatWest Mobile banking app
02/12/2017	17:25 transaction to betting site	£4,000	5926	NatWest Mobile banking app
02/12/2017	17:25 Someone logged into online banking via Mr T’s NatWest Mobile banking app			NatWest Mobile banking app
02/12/2017	17:29 Someone logged into online banking via Mr T’s NatWest Mobile banking app			NatWest Mobile banking app
02/12/2017	17:48 Someone logged into online banking via Mr T’s NatWest Mobile banking app			NatWest Mobile banking app
02/12/2017	17:51 transaction to betting site	£15,000	5926	NatWest Mobile banking app
02/12/2017	17:59 Someone logged into online banking via Mr T’s NatWest Mobile banking app			NatWest Mobile banking app

Mr T believes his mobile phone, which he usually locks, and which was logged into his gambling account, was accessed by an unknown third party. And that’s how these transactions occurred. Mr T says he didn’t report the matter to police because he says NatWest told him it would refund the transactions.

Mr T’s use of the betting site

The investigator contacted the merchant for information about the disputed transactions. It confirmed that the gambling account used to make the bets belonged to Mr T. It also confirmed that the betting undertaken on the disputed transactions was on the type of event Mr T usually bets on.

The merchant also explained that it’s possible for a customer to keep the gambling app remained logged in so they don’t have to provide a unique username, password or code each time.

Mr T confirmed that he had saved his bank card details into the merchant app. And that he’d used it previously on a number of occasions. I’ve seen Mr T’s bank statements and these show that he’d made a number of genuine high value transfers to the merchant in the months preceding the disputed ones.

access to NatWest mobile banking app

NatWest has confirmed that customers can access online banking via its mobile banking app. And it’s explained that to do so a customer has to enter either a six digit passcode, or use fingerprint or facial identification. Mr T told the investigator that he hadn’t disclosed any of his online banking information to anyone else. And that he believes he left his mobile banking app logged in when he wasn’t in possession of his mobile phone.

NatWest’s response to the complaint

Mr T complained about NatWest's decision to decline his claim. NatWest explained that it wouldn't be refunding the transactions because:

- as part of its fraud investigation it had contacted the merchant and it had confirmed that all the personal details it held matched the information NatWest had for Mr T;
- Mr T's genuine gambling account had been used to make the transactions;
- the same device (mobile phone) and IP address had been used to make the disputed transactions as well as previous genuine transactions and online banking log ins
- A review of Mr T's account statements over the past two years showed Mr T had a history of online gambling with the same merchant and had made regular payments to the merchant which he's not disputing. He also received regular credits from the merchant;
- there would be no financial gain for a fraudster to make the transactions as any winnings would go back into Mr T's account; and
- the mobile banking app is accessed via a six digit passcode, fingerprint or facial identification.

NatWest decided to close Mr T's bank account and informed him on 28 December 2017 giving him 14 day notice to make alternative banking arrangements. It also apologised for sending Mr T a text message telling him it would refund him. It said this was an error in its system which it was working to resolve.

our investigator's view

Our investigator didn't think the evidence supported Mr T's version of events. On balance she thought it was likely Mr T had authorised the disputed transactions. She said this because:

- the account usage didn't seem like it would be done by a fraudster because the fraudster wouldn't have been able to benefit from the bets as any winnings would've been allocated to Mr T's betting account;
- the disputed transactions were made using the same device Mr T previously used with the merchant to make similar transactions;
- there were nine *separate* online banking logins on 2 December 2017 between 4.51pm and 5.59pm. So the person using the mobile banking app had to be aware of the login details to be able to access the app *each* occasion they logged into the app;
- Mr T hadn't disclosed his online banking details to anyone else; and
- she also said that NatWest hadn't treated Mr T unfairly when it decided to block and close his account.

Mr T disagreed and asked for an ombudsman to look at everything. So the complaint has been passed to me to review.

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.

I'll start by setting out what I've identified as the relevant considerations to deciding what is fair and reasonable in this case. Of particular relevance to my decision about what is fair and reasonable in the circumstances of this complaint, are the Payment Services Regulations 2009 (the PSRs 2009) which apply to transfers like the ones made from Mr T's account. 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; …"

"***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 … that—

- *(a) the payment transaction was authorised by the payer; …"*

"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."*

I've also looked at the terms and conditions of Mr T's account. These set out that NatWest can close Mr T's account immediately under certain circumstances. And by giving him 60 days' notice.

Taking all the relevant considerations into account, including those set out above, my consideration about what's fair and reasonable in this case must first address whether the disputed transactions were authorised by Mr T.

Mr T says he must have left his gambling app logged in on his phone, and he thinks this is how someone was able to make the bets.

In order for what Mr T thinks happened to be possible, someone would have had to gain access to his phone, which he's said he usually locks, quickly and *before* it locked automatically. They would then have had to access the gambling app, made the bets and, throughout the time they were making the bets, they would have needed to guess Mr T's NatWest banking app log in details so that they could log in to his banking multiple times. Given that I don't know how long Mr T's phone would have remained unlocked during a period of inactivity in his coat pocket, I accept it's possible someone gained access to Mr T's phone *before* it automatically locked. So I've gone on to consider how likely it is that someone with access to the mobile phone device made the bets and logged in to mobile banking.

online gambling transactions

The disputed gambling transactions themselves don't look particularly unusual. What I mean by this is that they are similar to previous genuine gambling activity that Mr T has carried out. I can see from looking at Mr T's current account statements that in the previous month Mr T spent in excess of £40,000 on the same merchant gambling website. For example, I can see that on 27 and 28 November 2017 Mr T authorised two transactions of £4,000. And on 30 November 2017, he authorised another transaction of £5,000. The bets were also similar in nature to Mr T's genuine activity, involving a sport he regularly gambles on.

I've also kept in mind that there would be no financial gain for someone other than Mr T to place the bets which Mr T disputes. Any profits from winning bets would have been paid directly into Mr T's betting account, and transferring that money into a bank account would not have been instant. Taking all of this into account I think it's unlikely the disputed activity it was carried out by a third party.

online banking account

The investigator also found that Mr T's online banking had been accessed during the time that the disputed transactions occurred. But Mr T also told us no-one had access to his log in details.

I've considered the possibility that Mr T had left himself logged in to his online banking on his mobile phone. But if someone had taken his unlocked mobile phone and found his mobile banking app open, I think it's unlikely that they'd only check his balance. Mr T had a balance of more than £6,000 on the day of the disputed transactions and yet the third party didn't attempt to make any transactions or carry out any other activity. Again this doesn't look like the activity of an unauthorised person accessing Mr T's bank account.

I've also noted that Mr T's online banking was accessed on nine *separate* occasions between 4.51pm and 5.59pm. And, significantly, in between the times the bets were being placed. On each occasion Mr T's online banking information would have been needed to be entered to gain access to his banking app. NatWest has told us that access to Mr T's online banking via its mobile app is gained through entering a six digit passcode, fingerprint or facial identification. And Mr T has confirmed that he hasn't shared any of his login details with a third party. This strongly suggests that the phone was in Mr T's possession during the time that the disputed transactions took place. So I'm not persuaded on balance, considering all the evidence, that someone other than Mr T had access to his mobile phone at this time.

In summary, the disputed transactions took place from an online gambling account that Mr T already used. The transactions fit Mr T's pattern of spending and activity and there isn't anything unusual about the transactions. The multiple banking app logins suggest that Mr T had his phone at the time of the disputed transactions and, as I've said, there would be no financial gain for someone other than Mr T to place the bets.

Based on the evidence I've seen so far, on balance, I'm not persuaded that the gambling transactions were carried out by someone other than Mr T or by someone without his authority. And so I don't recommend that NatWest needs to do anything further or refund the transactions he disputes.

account blocks and closure

Mr T says because his account was blocked he was unable to pay his rent, and wasn't able to buy food. Mr T also says his direct debits weren't paid which affected his credit rating.
A bank is entitled to close an account with a customer, just as a customer may close an account with a bank. But before a bank closes an account, it must do so in a way, which is fair and complies with the terms and conditions of the account.

The terms and conditions of Mr T's accounts confirm NatWest can close the account immediately in certain circumstances. I think, considering what happened in this case, it's fair and reasonable NatWest took the action it did. I can see that NatWest wrote to Mr T on 28 December 2017 to let him know it was closing his account. And it gave Mr T 14 days to make alternative banking arrangements.

When NatWest wrote to Mr T to let him know it had decided to close his account it also told him that:

'Access to your account has been stopped meaning the following will happen.

- *any cards/chequebooks/pay in book will be cancelled*
- *access to online banking and the mobile app will be cancelled*
- *withdrawal of any overdraft facilities on your account*
- *cancel all standing order(s) and direct debit(s) authorities on your account(s)*
- *You won't be able to use the Account Switching Service to transfer your account to another bank.'*

So whilst I appreciate Mr T's direct debits weren't paid, and this caused him difficulty, I'm satisfied NatWest made Mr T aware he needed to make alternative banking arrangements, and it complied with the terms and conditions when it closed Mr T's account. So I can't say NatWest has done anything wrong when it blocked and closed Mr T's account.

return of Mr T's funds

Mr T's also unhappy about how long it took NatWest to return his closing balance to him. He's told us that he went into branch after receiving a letter from NatWest to collect his closing balance but wasn't able to access his balance.

Mr T says he had to make a number of phone calls to try and find out what was happening with his balance. And says because NatWest didn't release his balance he had no money. So couldn't pay his rent and bills. And he had to borrow money from friends.

Mr T says when he was eventually able to withdraw his balance, which was in excess of £30,000 he had to make a cash withdrawal, because NatWest would not make a bank transfer. He says this made him feel very anxious. As he was worried something might happen to him whilst walking around with such a large amount of money in his possession. He says this all caused him a great deal of distress and inconvenience.

NatWest decided to block and close Mr T's account on 28 December 2017, which meant from this date Mr T wasn't able to access the money in his account. But NatWest didn't release Mr T's balance to him until 7 February 2018.

I've listened to several phone calls Mr T made to NatWest to try and find out what was happening. In particular calls he made in January 2018, when NatWest told him they were reviewing his account and to call back in a 'couple of weeks.' But NatWest didn't ask Mr T for any information about his account. During this call Mr T told NatWest he had no money to pay his bills including his car tax, car insurance and rent. Mr T did as NatWest asked and called back again. However, he wasn't told when he could have his money released.

Prior to issuing my decision I've asked NatWest for an explanation why it took them until February to release Mr T's money to him. But I haven't been provided with any information except that at the time NatWest were unable to transfer Mr T's balance to another account.

I can see that this issue has had an impact on Mr T and caused him trouble and upset. Mr T has provided us with evidence that he was unable to pay his bills. Mr T's bank account was frozen for just over six weeks. That would have had an impact on almost anyone. In this case I don't think NatWest did enough to listen to what Mr T was telling them or let Mr T know what evidence he could provide about the money in his account. And I can't see they took any steps to move things forward until February 2018.

Overall, I consider that the circumstances here are such that Mr T is entitled to some compensation for trouble and upset. So I think NatWest should pay Mr T £350 compensation for what took place. I think that amount fairly reflects the level of distress and inconvenience caused to him.

my provisional decision

For the reasons I've explained I intend to partly uphold this complaint. And direct National Westminster Bank Plc to pay Mr T £350 to compensate him for the trouble and upset caused by taking too long to return his money.

I now invite Mr T and National Westminster Bank Plc to give me any further information they'd like me to consider before I make my final decision.

Sharon Kerrison
ombudsman