

complaint

Mr H is unhappy with Nationwide Building Society's decision to not refund transactions he says he didn't make or authorise from February to May 2018.

Mr H has another complaint with this service relating to other disputed transactions, beginning in August and October 2017. I'll issue a separate decision for that case, but may refer to some of the circumstances here.

background

Mr H contacted Nationwide in May 2018 as he discovered he was overdrawn and wanted to know why; he thought he should have still had money in his account. He spoke with an advisor and was told about the most recent transactions on his account. There were three to a gambling website with the final one taking him into an unarranged overdraft.

The call between Mr H and Nationwide appears to cut out at this point. Mr H contacts Nationwide at the end of June and asks if there's been any online spending since October 2017. He's concerned as he believes there should have been a block on any online payments since 5 October 2017.

Mr H thinks such a block was in place following his earlier fraud claim. He'd asked the bank to put one in place as he didn't carry out any online spending. Mr H went on to tell Nationwide any such payments on his account since early October 2017 must have been carried out by an unauthorised third party, given the limited way in which he used his account.

Nationwide considered whether Mr H should be responsible for the disputed transactions. There were ten different online retailers used over the period in question. But Nationwide thought Mr H had authorised all of those transactions himself and so didn't offer a refund.

Mr H brought his complaint to our service as he was unhappy with Nationwide's decision. He maintained that he'd not authorised the transactions. And he felt if Nationwide had done what it should have, and applied the block to his account, none of this would have happened. One of our investigators looked into what had happened.

In the course of his investigation Mr H confirmed some of the spending as genuine. But he still disputed some gambling transactions and payments to other online merchants.

Our investigator concluded it was more likely than not Mr H authorised the transactions himself. He noted that the majority of the transactions still in dispute, after Mr H had confirmed some of the online spending was genuine, were deposits to an online gambling company. He couldn't get any information from the gambling company, but did consider the nature of the transactions.

He said it was difficult to see why an unknown fraudster would have carried out any transactions for online gambling. That's because any winnings could only be withdrawn onto the same card used to make a deposit. And so unless the fraudster also had access to that card, such transactions would be of no benefit to them. There would be no way of the fraudster obtaining any winnings. Mr H hadn't reported any loss through the use of his physical card at this time and so this didn't seem to be a possibility.

Our investigator also noted that the transactions did match some of Mr H's normal account usage with other gambling companies. That suggested they were in fact genuine. And as some of the transactions were low value it further supported that it was unlikely a fraudster was in operation. He thought, had that been the case, such a person would have maximised their usage as quickly as possible. But that didn't happen.

On that basis, our investigator said he thought it was more likely than not Mr H authorised all of the disputed transactions himself. He then went on to consider what Mr H had said about the intended block on his account. But he didn't think what happened there changed the outcome.

He found that a block had been discussed in October 2017. That was following Mr H's other fraud claim, involving transactions using the physical card as well as online gambling transactions. But the bank had been unable to apply the block at the time as Mr H needed to get a new card before any block could be put in place. Mr H hadn't been able to do that over the phone and had to go into branch. But Mr H didn't go on to request the block again.

The investigator acknowledged that Nationwide could have been clearer that Mr H would need to request the block again. But he also recognised that the bank had never confirmed it was in place. And importantly Mr H had used his card for genuine online spending. That meant Mr H was aware that his card wasn't blocked for online spending and was happy to continue to use his card for such transactions. The investigator said, if unhappy, Mr H could have gone back to Nationwide to make the request again if he wanted to. As Mr H didn't do so our investigator didn't think Nationwide needed to do anything more.

Mr H disagreed and so the case has been referred to me for a final decision. Mr H's main disagreement was that Nationwide should have applied the block to his account in October 2017.

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'm not upholding it.

the disputed transactions

Nationwide can normally only hold Mr H responsible for transactions on his account that he's authorised. The relevant rules are set out in the Payment Service Regulations 2017. Mr H has said he didn't authorise the spending here and so I need to consider whether Nationwide has acted fairly and reasonably in denying a refund. I'm making a finding on whether I think Mr H more likely than not authorised the transactions himself.

I've considered the available evidence and have based my findings on what I believe is, on balance, more likely than not to have happened. That is to say, whether I believe it's more likely than not Mr H made the disputed transactions himself or someone else did, without his authority.

I can see Mr H first contacts the bank about this issue May 2018 when his account goes overdrawn. He wasn't expecting that to happen. But he doesn't raise a dispute at the time. He doesn't get back in touch with the bank until the following month. I'm unclear as to why that is but it seems unusual. I'd expect him to have been reviewing his account at that stage, having realised something was wrong. Such a review would have revealed all of the disputed spending. But that doesn't appear to have happened and a dispute wasn't raised until some time later.

I also find it strange that Mr H at first seemed to dispute all online spending on his account. But when questioned further about the activity he's said some of the merchants involved were genuinely used by him. And some of the genuine online spending is similar to what's been disputed. It would be unusual for an unknown fraudster to replicate the genuine spending of his or her victim.

I also note the claim is very similar to Mr H's earlier fraud claim where he disputed spending with a different online gambling company. This would mean a fraudster had somehow obtained two lots of card details from Mr H and carried out a near identical fraud. All whilst Mr H had genuinely spent with the same type of merchant in-between reported instances of fraud.

I'm mindful too that Mr H has at different times said:

- he doesn't use his card online and then has confirmed such spending as genuine;
and
- he gambles but not online but has later confirmed online gambling transactions as genuine.

And so there's unexplained inconsistency in Mr H's version of events. And throughout all of this – and Mr H's other complaint – he's offered no explanation for how someone else might have been able to use his card without him knowing. I accept a genuine victim of fraud may not always know how they've come to be in the position they're in. But the lack of detail here – including Mr H being unable to say where he was living at the time – presents a significant difficulty in establishing an alternative scenario other than Mr H carrying out the transactions himself.

I've taken all these considerations into account and I think, when combined, they point to it being more likely than not that Mr H authorised the transactions himself. I won't then tell Nationwide to refund them.

blocking the account

I completely accept that Mr H did discuss a block on his account with Nationwide in October 2017. But it was clearly explained to Mr H that such a block couldn't be applied until the new card was issued. And that wasn't possible until Mr H had visited a branch.

I agree Nationwide could have been clearer about what Mr H needed to do next. It could have made it more explicit that he'd need to follow up on his request for a block to be applied to online spending. But that's not the end of the story and it doesn't mean Nationwide should now refund any online transactions.

Mr H was clearly aware the block he'd requested hadn't been put in place. We know this to be true as he was successfully carrying out undisputed online spending himself. So he must have known that his card details could still be used online.

Mr H didn't go back to the bank to request the block be put in place. He seemed to be happy to be able to continue using his card for online spending. If he wasn't happy for that to happen then I believe he should have spoken to Nationwide about it.

It's true Nationwide could have done more here. But it's also true that Mr H could have done more to make sure the block he wanted was put in place. As he didn't take any action he's not looked to prevent any possible loss. I'm not then directing Nationwide to compensate Mr H for any loss he believes he's incurred as a result.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 February 2020.

Ben Murray
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