

The complaint

Mr S has complained that National Westminster Bank Plc (NatWest) won't refund transactions he says he didn't make or otherwise authorise.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In late 2021, Mr S opened a current account with NatWest. He deposited around £3,000, which was then sent abroad in two international payments a few days later. Mr S continued to use the account.

In late 2022, Mr S reported the international payments as fraud. He said he hadn't noticed them before because he often dealt in large amounts and could lose track.

NatWest held Mr S liable for the payments in dispute, on the basis that they'd been made using Mr S's security credentials, and he checked his online banking afterwards many times and would've seen the payments, but he didn't report them at the time.

Our investigator looked into things independently and didn't uphold the complaint. Mr S didn't agree, so the complaint's been passed to me to decide.

I sent Mr S and NatWest a provisional decision on 10 October 2023, to explain why I didn't think the complaint should be upheld. In that decision, I said:

Broadly speaking, NatWest can hold Mr S liable for the payments in dispute if the evidence suggests that he authorised them. To clarify, no one here is required to prove what happened beyond reasonable doubt – this is not a criminal case. We're just looking at what's most likely.

Because the payments were not reported until a little over a year after they happened, the available evidence is more limited. After all, NatWest are required to dispose of data rather than hold onto it for too long.

As such, while I do appreciate why Mr S would like to see CCTV footage, such footage is only kept for about a month as standard, so it would've been long gone by the time he reported the matter. And even if CCTV footage were still available, it would've only shown what the person making the transactions looked like. It would not have shown whether they had Mr S's permission or not, which is the key consideration.

Similarly, I understand there's been some confusion about how the payments were made, because the information is more limited after the time that's passed. According to the online banking audit, two international payments were attempted online, though it's unclear whether those attempts went through or whether the customer was referred to branch. According to international payment processes, for this amount it would usually be done in branch. To be on the safe side, I will consider both possibilities.

For these payments to have been made in branch, the person making them would need Mr S's genuine card and the correct PIN. Mr S's card didn't go missing – I can see he still had it afterwards as he used it for genuine spending. And it's not likely or plausible that a thief would return Mr S's card to him after stealing it – that would substantially increase their chances of being caught while providing no benefit to themselves. It's also unclear how someone could've known Mr S's PIN without his consent. As the account was new, Mr S had never made any payments with his PIN before, so there was no opportunity to watch him enter it before this. And his PIN was a randomly generated number, not a number that might've been easy to guess such as a birthday. So if the payments were made in branch, then it's not very likely or plausible that they were made without Mr S's consent.

For the payments to be completed online, they needed Mr S's online banking security details, and for his genuine card and the correct PIN to be used in a card reader. According to the technical data at hand, the attempted international payments were authenticated properly, and there is no sign of any unauthorised access to Mr S's account. It's not clear how someone could've known Mr S's security details without his consent. And again, there doesn't seem to be a likely or plausible way that someone had access to Mr S's card and PIN without his consent. Further, I can see that the online attempts at international payments were made from the same IP address which Mr S had used for his genuine activity.

Indeed, I can see that Mr S accessed his online banking from his usual IP addresses both between the international payments and afterwards. He saw his balance being spent, downloaded more detailed statements, and had to make credits into his account in order to fund his later spending. So I'm reasonably satisfied that Mr S was aware of the disputed payments at the time. But he didn't tell NatWest anything was wrong for a year. It is not likely or plausible that Mr S would wait so long to report the disputed payments if they were made without his consent.

Mr S argued that as he dealt in large sums, he wouldn't notice a few thousand pounds go missing. But the disputed transactions paid out almost the entire balance of the account at the time. Following the disputed spending, Mr S had to pay more money in in order to make his subsequent payments. And according to Mr S, he'd ringfenced the £3,000 or so for a very important purpose. It is simply not credible that Mr S would not notice this money get paid out if it did so without his consent – not least as he was actively checking his account.

While this is a more minor point, I might've expected a thief to try to take as much money as possible, as quickly as possible, before they are discovered and the account is blocked. But here, there were days between the first smaller payment and the second much larger payment. The person using the account appears to have been confident that Mr S would not report the matter in those days. Similarly, since Mr S didn't report the matter at the time, his security details were not changed, so the alleged thief would've continued to have full access to his account. Yet despite Mr S depositing very large sums in the following months, there was no further disputed activity. Again, this makes it seem very unlikely indeed that the account was being used by a thief or fraudster.

I understand that Mr S is unhappy NatWest blocked his account. But it was reasonable for them to do so after he told them a fraudster had full access to it. I appreciate he would have liked NatWest to have blocked the disputed payments in 2021 too, but I can't see that they had good reason to do so – at the time, it would've looked like the payments were authorised by their genuine customer.

I also understand Mr S is unhappy that NatWest recently closed his account. However, this occurred after Mr S brought this case about disputed payments to our service, and is a separate issue to the matter of the payments themselves. If he wishes to, Mr S can raise a separate complaint with NatWest about the closure of his account.

In summary, based on the evidence, there does not seem to be a likely or plausible way that the disputed payments were made without Mr S's consent. Whereas it looks like Mr S was aware of them at the time and chose not to report them. So it seems fair for NatWest to decline a refund in this case. This is a difficult message for me to give, and I know it's a difficult message for Mr S to receive. But given the evidence I have so far, and the balance of probabilities, I'm currently unable to reasonably reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 24 October 2023. But I've not received a reply from either side.

What I've decided – and why

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

Neither side have sent me any new evidence or arguments before the deadline. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 November 2023.

Adam Charles
Ombudsman