

## **The complaint**

Mr B complains that National Westminster Bank Plc (“NatWest”) failed to refund transactions he didn’t recognise.

## **What happened**

### *What Mr B says*

Mr B was abroad with friends on a night out where he became split from his group and couldn’t find his hotel. He asked for directions outside an adult club and was persuaded to go inside for drink. He said he was happy to do this as he was asking for help.

Mr B remembers purchasing a couple of drinks, first trying a card from a different bank which I’ll refer to as C (declined). Mr B then used his NatWest credit card to purchase the drinks which he thought would be around £5-£10 each. It was later found that the transactions were for considerably more.

Mr B said at some point, he gave his phone (presumably the club staff) for them to show him where his hotel was, and he thinks they had it for a while before handing it back to him. He can’t remember how long he stayed at the club and thinks he may have been shown back to his hotel.

When he awoke, he noticed a message on his phone from NatWest concerning a suspicious transaction made from his NatWest debit card. He confirmed he didn’t recognise the transaction and then became aware of other payments that had been made using his NatWest credit card totalling over £7,000 – all from the club he’d attended.

Mr B later said he thought he may have been drugged and there were other attempts to use his card from C which were declined. Mr B denied using his NatWest debit card at the club. He contacted NatWest about the situation and had several calls with them over the next few days.

NatWest told Mr B that all the transactions he was disputing were made using the credit card and its correct personal identification number (PIN). Mr B didn’t know how his PIN had become known to anyone else but thinks that the club staff may have seen him enter it for one of the earlier transactions he made for a round of drinks. Mr B confirmed he no longer had his credit card but still had his debit card and his card from C.

During one of the calls, Mr B said they (the club staff) had added extra noughts to the transactions and used his credit card after he’d left the club.

NatWest said they would have difficulty refunding payments of this type because the PIN was only known to Mr B. They advised that he report the matter to the local police, which Mr B did. He was told by them (police) that it wasn’t uncommon for people to report such experiences after visiting this type of club. In one of the calls with NatWest, Mr B was told that nothing was taken from his card and all the payments had been prevented (which related to the debit card transactions), but Mr B was under the impression this related to the

credit card payments.

When NatWest declined to make any refunds, Mr B lodged a complaint and believed they should have prevented the disputed transactions because they were unusual when compared to how he normally used his card. Mr B wanted a refund and an apology for the way his situation was handled.

#### *What NatWest say*

NatWest explained that their debit and credit systems operate independently and have different fraud parameters based on the current threats and fraud patterns. They've said that none of the credit card payments triggered their fraud systems, so no messages were sent to Mr B about them.

NatWest's fraud prevention system noted a payment had been attempted using Mr B's debit card and sent him a request to confirm the payment or not. Mr B didn't see that payment at the time, so the fraud prevention system stopped any further use of the card due to a lack of response. There were several other attempts to use the card which were all blocked.

When they spoke with Mr B, they tried to understand how his PIN had become known for others to use his account and make the transactions. They concluded that Mr B himself was responsible for the payments and declined to refund him.

They held several calls with Mr B and it's apparent that there was a misunderstanding about which card was being discussed. Mr B thought he was talking about his credit card and NatWest were talking about preventing all his debit card transactions.

#### *The investigation so far*

Mr B brought his complaint to the Financial Ombudsman Service for an independent review where it was looked into by an investigator. Both parties were asked to provide information about the complaint.

Mr B was able to add that:

- He believed he'd been drugged because he felt "extraordinarily ill" the next day.
- He believed he hadn't tried to use his debit card whilst at the club.
- Apart from the couple of drinks he brought, the other disputed transactions occurred when the card wasn't in his possession.
- He thought he was just having a nice chat with the club staff.
- He didn't comprehend the type of environment he was in and had never been exposed to this type of criminality.
- He didn't think he had the same PIN for his different cards but couldn't be certain.
- He thinks the club staff were trying different amounts on his card to get payments authorised.
- He had a £2000 monthly limit set on his credit card which should have stopped the further use of his card.

NatWest were able to say that:

- They blocked attempts to use Mr B's debit card.
- All the disputed transactions used Mr B's genuine credit card and the registered PIN.
- Mr B was within his credit limit for his card and there were no PIN errors when the card was used.
- NatWest had blocked a recurring payment some days earlier with his credit card (unrelated to this complaint).
- Mr B was evasive when he first called and denied making any genuine transactions in the club.
- An earlier spending cap wasn't in force at the time.
- They were holding Mr B responsible for these payments.

After reviewing the evidence, the investigator concluded that there was no point of compromise to explain how someone other than Mr B could have known the PIN number for the debit card. Whoever was carrying out the credit card transactions did so immediately after trying the debit card, indicating the user had both cards to hand.

They also concluded that Mr B was likely taken advantage of by the staff inflating the charges rather than the card being used without Mr B's knowledge. It was also commented that no further attempts to use the card were made which would have been expected if it was a third party who had the card and PIN.

In relation to the spending cap, the investigator concluded that NatWest weren't obliged to apply it because it hadn't been renewed. Overall, Mr B's complaint wasn't upheld.

Mr B responded and disagreed with the outcome, asking for a further review of his complaint. He continued to believe his debit card hadn't been used at the adult club and that NatWest had verbally confirmed they'd cancelled the disputed transactions.

As no agreement could be reached, the complaint has now been passed to me to decide.

I've set out a table of various card attempts during the trip to the club by Mr B:

9 November 2023- Time (am)	Amount (£)	Transaction Outcome
00.13	264.66	Declined C
00.14	705.75	Approved NatWest credit
00.23	1411.50	Approved NatWest credit
01.28	105.85	Approved C
01.32	1411.50	Declined C
01.32	705.75	Declined C

01.33	1058.63	Declined NatWest debit
01.33	1058.63	Approved NatWest credit
01.56	1411.50	Declined NatWest debit
02.15	1411.50	Approved NatWest credit
02.39	1058.63	Declined NatWest debit
02.40	1058.63	Approved NatWest credit
03.03	1411.50	Declined NatWest debit
03.04	1411.50	Approved NatWest credit

### **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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that NatWest can hold Mr B liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

NatWest can only refuse to refund unauthorised payments if it can prove Mr B authorised the transactions, but NatWest cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless NatWest can show that consent has been given, it has no authority to make the payment or to debit Mr B's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr B. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr B responsible for the disputed transactions or not.

It's apparent from reading and listening to Mr B's evidence that he has, at best, a hazy recollection of what happened that night in the adult bar. NatWest thought that Mr B was being evasive and whilst there are some differences in his version of events, I think this was probably the result of his experiences that night, rather than anything else.

I wouldn't be surprised if he was drugged, or at the very least heavily intoxicated. Whilst that has a bearing on his experience that night, it doesn't prevent him being held responsible for the use of his card if the evidence indicates the payments were carried out with his knowledge.

What that means for Mr B's complaint is that even if he was drugged and thought he was paying £5-£10 for a drink, the responsibility for using his card lies with him. So, even if I accept those payments were inflated by the club staff, he would still be liable. That's because he's used the agreed manner to make the payment – the card and its security PIN.

Mr B argues that he wasn't responsible for those later transactions, which were made after

the card was taken from his possession. But, the evidence indicates he was present in the club until (at least) the final declined payment made at 03.03 am that morning because he still had that card in his possession when he woke up.

Mr B was asked about the PINs for his various cards. He didn't think they were the same but couldn't be 100% sure. I found this slightly unusual that he couldn't remember as it wasn't linked to the loss of memory that night and I would think that most people would know if they changed all their PINs to the same one or not. I've ruled out the scenario of the PIN(s) being guessed as the number combination makes a successful guess on the first attempt highly unlikely.

The relevance of this is that during the visit to the club, Mr B used three different cards (despite denying he'd used his debit card) and it seems unlikely to me that the club staff were able to obtain the PINs for his cards and to keep using them without his knowledge. There were no failed PIN attempts on his credit card, and it seems as though the PIN for his debit card was also used without trouble (even though the attempts were declined).

The payments show that Mr B tried his card from C (which he remembers) and that was declined. One minute later (00.14) he used his credit card for a payment of £705.75. That would have been the first drink, so is unlikely to have been consumed prior to payment. Even if this was drugged (although there's no medical evidence to support that), I doubt it would have taken effect at that point.

Mr B then goes on to make a further transaction at 00.23 with his credit card and the next payment isn't for another hour or so using his card held with C. A smaller payment was authorised before two larger attempts were declined on this card. Then, Mr B uses the debit card from his NatWest account, which was declined, so at that point there are three different cards in play. The credit card was then used to make a successful payment before the debit card was tried again, which failed and was replaced by the credit card. This continued to happen twice more.

It's hard to be certain what was actually happening in the club, but it's clear to me that Mr B had used three cards at some point and was also present throughout. There are a few other pointers that lead me to conclude these transactions were made with Mr B's permission.

Those are that:

- If this was pure theft and the thieves had a working card, why would they keep trying other cards that had already failed?
- If they were carried out without Mr B's knowledge there was no reason to take smaller payments when bigger ones had been authorised on the same card.
- The pattern of payments doesn't suggest a rapid emptying of the account.
- The pattern of the later payments shows two different levels of payments suggesting different types of purchases.
- Several thousand pounds were left in the account – this is unlikely to be abandoned by a thief who had the card and PIN as they could have easily used a cashpoint to take some more cash or just put through more purchases.

I understand Mr B believes he was scammed by criminals that evening and to an extent I think he was probably taken advantage of by them. But that doesn't mean he can't be held liable for these payments. Overall, my objective assessment of all the evidence is that I think

Mr B used his various cards to make purchases within the club, even though he may have been unaware of the final payments put through the payment terminal. That means I think he was more likely than not responsible for these transactions, and it was both fair and reasonable for NatWest to hold him liable for them.

I've also thought whether these payments should have been stopped by NatWest. As they were chip and PIN, there's more security involved here because they have to be the genuine card and a PIN known only to the card holder, so NatWest can be confident they're being carried out by them. Whilst the pattern of payments was higher than normal, Mr B was abroad on a leisure trip, so usual patterns won't apply and none of these transactions or their cumulative spend took Mr B anywhere near his credit limit. I don't think NatWest had particular cause to intervene when looking at all these points.

The debit card transactions were stopped because Mr B didn't respond to the message – which his phone settings prevented him from seeing anyway. NatWest explained that debit cards have different fraud settings which were triggered here.

I know Mr B thinks his monthly spend limit should have stopped some of these payments. But as far as I can see it wasn't enabled for his card at the point he was away, so I can't expect NatWest to abide by it.

Having listened to the calls, it's clear there was an element of confusion about which cards were being discussed, Mr B thought NatWest were talking about his credit card transactions when they were referring to his debit card activity (which was all blocked). Looking back through it, this no doubt could have been better explained by NatWest, but it didn't materially affect the outcome of the situation. I hope that NatWest can accept that they could have been clearer and not to assume that both parties necessarily know what they're talking about.

In conclusion, I understand that Mr B has had a very unpleasant experience when on his trip, but whilst I was sorry to hear about this, I don't think the transactions he's disputed were carried out without his permission.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 June 2024.

David Perry  
**Ombudsman**