

complaint

Miss Q says that she was not responsible for two cheques being paid into accounts held in her name with National Westminster Bank Plc or the transactions that were made by use of the proceeds of one of the cheques.

Both cheques were subsequently returned unpaid and she complains that NatWest has held her liable for a debt that was created by transfers being made to third party accounts, retail purchases and cash withdrawals from one of Miss Q's accounts and the cheque paid into that account being returned unpaid. Miss Q says she has no knowledge of any of the activity that went on.

background

Our adjudicator did not recommend that NatWest needed to credit Miss Q's account with the value of the disputed transactions and thereby eliminate her debt to the bank caused by the cheque being returned unpaid.

He noted that Miss Q was denying being involved in either paying in the cheques, or making or authorising the disputed transactions and Miss Q did phone the bank to report cards as being lost. He also noted that she said she only became aware of what had gone on when she was notified of a cheque being returned unpaid.

However, he had regard for a number of factors. The cheques were paid in at machines located in two different branches and to have paid them in, the card associated to the account was needed. Even if Miss Q had lost her card, the process also required the corresponding personal identification number ("PIN") to be entered and Miss Q has said that this was not kept with the card and she can offer no plausible explanation as to how this could have been obtained by someone else. Miss Q did say that the PIN was stored on her mobile phone but this was locked and no explanation has been provided of how someone could have learnt the PIN through accessing the phone.

The adjudicator was satisfied that each of the disputed transactions was also made using the card and PIN. There were no failed PIN attempts. And the last genuine transaction made using the lost card was 11 days before the first disputed transaction. On balance, the adjudicator did not think the PIN was obtained by someone seeing it genuinely being entered and then being able to use the card many days later.

The adjudicator was also satisfied that a number of the disputed transactions were transfers from Miss Q's account and were made using her online banking facility. In order for the transfers to be made, a customer number, password and passcode would be needed and no plausible explanation was available of how this information could have been obtained.

It was noted that some genuine usage took place on Miss Q's online and mobile banking facilities and the adjudicator took account of how Miss Q could not have noticed the unusual – and disputed as being her - activity well before Miss Q reported it to the bank especially considering how much money was being credited and debited from the accounts.

The adjudicator also noted that NatWest had provided evidence that text alerts were sent to Miss Q about some of the transfers. Miss Q denies seeing them but the adjudicator was satisfied that they were sent and he questioned why the transfers were not disputed sooner.

Finally, Miss Q did raise an issue about whether the bank ought to have frozen her account before the disputed transactions could be carried out. She says that she contacted the bank before they were made but the adjudicator noted that Miss Q had cards for three accounts and he listened to a call from when lost cards were originally reported and Miss Q only asks the bank to cancel two cards, only one of which was for an account that had a returned cheque paid in to it. The majority of the disputed transactions took place on an account, where the other returned cheque was paid in to but where there was no instruction from Miss Q to cancel the card.

In conclusion, on balance, the adjudicator did not consider that he could safely conclude that the cheques were paid in, or the disputed transactions were made, without Miss Q's knowledge or permission.

Miss Q has asked that her complaint be reviewed by an ombudsman although she has not produced anything substantively new for me to take account of.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having done so, I have broadly come to the same findings and conclusions as the adjudicator.

I am also satisfied that the genuine card was used and the correct PIN entered at the time that the cheques were paid in and the disputed transactions were made. I have seen no evidence in this case to suggest how the PIN could have been obtained by a fraudster from, say, the card; or how the card could have been used in a manner that led to the bank's records reflecting the recorded use of the card and PIN, when that was not the case.

I am therefore left to consider this complaint on the premise that the original card was used and the correct PIN entered. I can never now know for certain what happened. And I have taken into account what Miss Q says about her not making them. But I also have to take account of the records of the bank and what Miss Q says about the PIN, its security and the lack of access to it by anyone else.

Ultimately, where evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities; that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances. And, on balance, I agree with what the adjudicator says about it seeming unlikely that the PIN was observed being entered by Miss Q, the card obtained then but no fraudulent activity carried out until later; or the PIN was observed being entered and the card was only able to be obtained later.

And I also have to take account of there being no plausible explanation of how access to the online banking facility was obtained by a third party.

Taking everything into account, I am afraid that there exists no compelling explanation as to how a fraudster could have obtained the PIN or the online banking instructions in order to deposit the cheques or make the transactions. And I, therefore, cannot fairly and reasonably say that Miss Q was a victim of fraud and she did not make or otherwise authorise the disputed transactions. As such, I do not require NatWest to refund to Miss Q the value of

those transactions – which created the debt on the account - on the basis that she should not have been held liable for them.

my final decision

Under the rules of the Financial Ombudsman Service, I am required to ask Miss Q to accept or reject my decision before 6 March 2015.

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

Ray Neighbour
ombudsman