

## The complaint

Mr C complained because Nationwide Building Society refused to refund him for transactions he said he didn't make.

## What happened

On 5 December 2022, Mr C rang Nationwide. He said his phone had been hijacked by malware a few days earlier, and there were some payments on his account which he didn't recognise. He said the transactions were to a gambling firm, and he didn't use its services. The adviser noted that there were other transactions to a different gambling firm, and Mr C said yes, but he didn't use the firm to which the disputed payments had gone. Nationwide's adviser pointed out that the disputed ones were back in November, and Mr C said yes, it had been one or two weeks ago. The disputed transactions took place between 15 and 21 November and the amount in dispute was £1,645.

The adviser on the call pointed out that there had been genuine transactions on Mr C's phone around the same time. Also, Mr C's phone and IP address (a unique computer identifier) had also been used for the disputed gambling transactions. She told Mr C that if he wanted to report these as fraud, it would mean his phone and IP address would be blacklisted, and he wouldn't be able to use them for any future transactions. She checked several times that Mr C understood this, and he agreed. She issued a replacement card. She told Mr C that she'd sent the information to Nationwide's fraud team, and that he would either get a refund within 48 hours, or it was more likely that the fraud team would contact him.

On 8 December, Mr C contacted Nationwide to raise a complaint, because he hadn't had a reply within 48 hours. He also complained about phone call waiting times.

Nationwide sent its final response to Mr C's complaint on 24 January 2023. It said that it had worked Mr C's complaint on 13 December, which was within the 10 day timescale which the adviser should have given Mr C. It said it had checked its records and there hadn't been any call wait longer than 20 minutes. As Mr C had been given the wrong information, it paid him £50 compensation for this.

But Nationwide said it couldn't confirm an error had been made in relation to Mr C's other complaint points. It said that in most cases, a bank must refund a payment without unnecessary delay, by the end of the next working day - unless the bank had reasonable grounds to suspect the customer acted fraudulently. Nationwide said that it had had reasonable grounds to suspect this. It said that the disputed spend hadn't been indicative of fraud, and fraudsters don't use gambling merchants to steal money, because of the way the sites operate – because any winnings would go back to the account. Fraudsters could only benefit from gambling spend if they had full access to the account.

Nationwide said that because of Mr C's complaint, it would contact the gaming firm, to obtain information about the betting account. If the betting firm account matched Mr C's details, the refund would be reversed and Nationwide would close Mr C's accounts within 60 days. If the

betting firm account didn't match Mr C's details, it would leave the case as it was and wouldn't be in touch again.

Nationwide then wrote to Mr C to say that the betting firm had provided information which matched the information it held about Mr C. And it wrote to say that, in line with Section 37 of its current account terms and conditions, it would close his account and any other Nationwide products Mr C held.

Mr C wasn't satisfied and contacted this service. He said that in late December 2022, his house had been burgled. His phone and tablet were among items stolen and he'd reported this to the police. He said that a few days later he'd realised there were transactions to a gambling firm which he hadn't made. He said if Nationwide had asked him for more information, he'd have told them that his phone had been stolen in the burglary. He said the thief had used the information on his phone, including his account with the gambling firm. He said it was unreasonable that Nationwide had rejected his claim simply because the transactions had been made from his phone, and to his own account with the gambling firm. He also said Nationwide should have given him notice but had closed the account almost immediately. Our investigator asked a number of questions, including how Mr C got his phone back. He said he'd found out where the thieves lived and had gone round and persuaded them to give his phone back because he'd reported it to the police.

Our investigator didn't uphold Mr C's complaint. She pointed out that Mr C's account of what had happened had been contradictory. The gambling organisation had confirmed two accounts for Mr C, with the phone and IP address the same before, during and after the disputed transactions. They said there was no change in the pattern of spend, and any winnings had gone direct to Mr C. The investigator also told Mr C that she'd contacted the police, who had confirmed that Mr C had reported a burglary, but they'd said that all attempts to obtain a statement from Mr C had failed, so the case had been closed. And in any case, the burglary in December 2022 had happened after the disputed transactions in November 2022.

Mr C didn't agree. He said the investigator hadn't thoroughly considered some of his primary evidence. He asked for an ombudsman's decision.

### **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.

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So I've considered whether it's more likely than not that Mr C, or a third party without his consent, carried out the disputed gambling transactions between 15 and 21 November 2022.

I've first considered the technical computer evidence. This shows that the disputed transactions were carried out using Mr C's registered phone, which he'd used for undisputed transactions. They were also carried out from an IP address which Mr C had used before for undisputed transactions.

So I've looked at what happened with Mr C's phone. I've listened to the relevant call recordings, and when Mr C first contacted Nationwide on 5 December, he said that his phone, which he still had, had been hijacked by malware a few days ago. It was only later, when he contacted this service, that Mr C said his phone had been stolen in a burglary in late December. Later still, in response to the investigator's questions, he alleged that he'd

found out who the fraudster was, gone round to their home and recovered the phone from the fraudster. I don't find Mr C's account of how he'd recovered his phone convincing. But in any event, neither malware in early December, or a burglary in late December, can explain the disputed transactions which took place in mid-November.

Mr C's version of events also varied in respect of the betting firm. The phone call recordings show that he initially told Nationwide that he didn't use the services of the gambling firm. But when Mr C contacted this service, he said that the thief had used Mr C's account with the betting firm.

So Mr C's account of what happened has varied over time, both in relation to his phone having malware or being stolen, and in relation to whether or not he had an account with the betting firm. This makes his version of events less plausible.

I've also seen the confidential evidence from the betting firm. In summary, this doesn't indicate that the transactions were carried out by a third party fraudster.

Taking all the relevant factors into account, I find it's most likely that Mr C carried out the disputed transactions himself. So Nationwide doesn't have to refund him.

Finally, for completeness, I'll deal with some of the peripheral matters raised by Mr C.

- He said Nationwide should have refunded him by the end of the next working day after he first complained. But here, the evidence I've seen indicates that Nationwide had genuine grounds to doubt whether the disputed transactions were indeed fraudulent, so it was fair and reasonable for Nationwide to investigate before providing a refund to Mr C.
- He was also unhappy that Nationwide closed his account and said it hadn't given him notice. The terms and conditions of Mr C's account provide that in certain circumstances Nationwide can close a customer's accounts immediately.
- I've also considered the £50 which Nationwide paid Mr C on 24 January 2023. This was for its call handler having told Mr C he'd be contacted within 48 hours, when she should have said 10 days. I find that the £50 Nationwide paid was fair and reasonable.

### **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 C to accept or reject my decision before 4 April 2024.

Belinda Knight  
**Ombudsman**