

### **The complaint**

Mr A is unhappy with Nationwide Building Society's decision to not refund transactions he says he didn't make or authorise. He says he didn't receive his replacement card or PIN. He's also unhappy with its decision to close his account.

### **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief summary here - focussing more on the reasons for my decision.

Mr A opened a new account with Nationwide into which he made two large deposits – totalling £4,000. He reported his debit card as lost shortly after. Mr A was told to expect a replacement card to arrive within five working days. According to the bank's records, a replacement card was sent to Mr A's address. Four days later it received a call confirming the card had been received and a request for a PIN reminder was made – which it also sent to the same address. Around twelve calendar days later Mr A contacted Nationwide to report that he hadn't received his card, but in the meantime, transactions totalling £5,573.73 had been made from his account, using his replacement card and PIN, across a three-day period taking his account into its arranged overdraft.

Mr A says he didn't make or authorise the transactions. He asked for a refund.

Nationwide reviewed Mr A's claim. It concluded that he had been responsible for the activity on the account. It declined his request for a refund – holding him liable for the disputed transactions and the debt created. It also decided to close Mr A's account following the fraud claim. It gave him 60 days' notice of the closure.

Mr A referred the matter to this service, but our investigator agreed with Nationwide's conclusions. She thought it was more likely than not that Mr A had made or authorised the transactions. She concluded Nationwide's decision to hold Mr A responsible for the spending on his account and its actions in terms of closing the account were fair and reasonable. Mr A didn't accept her conclusions and asked that the case be reviewed again by an ombudsman.

### **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.

Having done that, I've reached materially the same outcome as the investigator did, and for broadly similar reasons.

My role is to consider the evidence presented by both parties and reach what I think is an independent, fair and reasonable decision based on the facts of the case. When considering what's fair and reasonable I've taken account of all the relevant information provided to me by both parties to the complaint and the relevant law and regulations, guidance, codes of practice and good industry practice.

I'd like to assure Mr A I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. The purpose of my decision is to set out my conclusions and reasons for reaching them. I'm afraid I won't be answering every question in detail which Mr A has raised in his submissions. My findings focus on what I consider to be the central issues. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is the right outcome.

Mr A has also mentioned in his submissions that it has not been proven by Nationwide that the activity was not fraud. Nor has it shown that he made or consented to the disputed transaction. It's worth noting that we are an informal dispute resolution service, acting as an alternative to the courts. We don't consider fraud complaints in the same way as a criminal court might. It is not my role to prove what exactly happened. Where there's a dispute about what happened – as is the case here, and the evidence is incomplete, inconclusive or contradictory, we reach our conclusions on the basis of what we consider is most likely to have happened in light of the available evidence and the wider circumstances.

The investigator wrote a detailed view that set out in full the facts, the transactions, the relevant regulations and the evidence. Both Mr A and Nationwide have read the investigator's view, so I won't repeat every detail here, only those which form the basis of my decision.

The regulation that is relevant when considering Mr A's complaint in relation to the disputed transactions is the Payment Services Regulations 2017 ("PSRs 2017"). In short, Nationwide is generally required to refund any unauthorised transactions. Mr A says he didn't make the disputed transactions and they are unauthorised. So, my primary concern now is to come to a view about whether or not I think Mr A authorised the transactions and whether Nationwide's conclusion that he did was reasonable. If I'm satisfied that Mr A did, then I wouldn't ask Nationwide to refund him.

Looking at all the facts of this case, I can't know for certain exactly what's happened. I wasn't present at the time the disputed transactions took place or when the preceding and ensuing events occurred. So, in situations like this, as I've explained above, I need to decide a case on what I think is more likely than not to have happened. To help me decide this I've looked at the evidence of the payments, as well as what both Mr A and Nationwide have told us.

Mr A's genuine card and PIN were used to make the disputed transactions – neither party has disputed this. However, I'm not persuaded that, as suggested by Mr A, an unknown third party managed to intercept both his card and PIN and used these without his knowledge or consent. I also don't think it's unreasonable for Nationwide to conclude that Mr A authorised the transactions he disputes. I say this because;

- The card and PIN were sent in unmarked envelopes – separately. They were sent to Mr A at his home address registered on the account. Mr A has explained that he lives with family members and that his house has its own secure letter-box.

- I appreciate Mr A thinks his card and PIN could have been intercepted at any point during their transit from the bank to his home address. But I'm not persuaded, and I think it's less likely, that an unknown third party randomly managed to intercept Mr A's debit card, somehow found out he had been told by Nationwide to call back on receipt of the debit card to order a PIN, was also then able to successfully order, pass security and intercept the PIN. I therefore find that it more likely that the card and PIN were delivered to Mr A at his home address.
- Mr A left it almost two weeks before contacting Nationwide despite being told when he reported the card lost, that it would arrive within five working days. And even then, he only contacted Nationwide because he'd received an email from them. I find it unusual that Mr A didn't make further inquiries at this time and wasn't more observant about the time that had passed. More so because he has informed both Nationwide and this service that he'd recently been a victim of fraud – specifically postal interception by an unknown third party. I would've expected Mr A to have contacted Nationwide when his card didn't arrive within the five working days.

Whilst Mr A believes he has been the victim of fraud at the hands of an unknown third party. Based on what I've seen, I think it most unlikely that someone unknown to Mr A was able to intercept his card, successfully request and intercept on a separate occasion a PIN reminder. I note Mr A does not see that anyone living at home or close to him would have done so but he has more recently questioned the possibility. However, I also think it unlikely too that someone known to him – such as a family member – would have been able to do so without his knowledge or involvement.

Mr A has questioned the reliability of the evidence and doesn't think Nationwide has investigated the fraud diligently. He says he was initially advised by a member of Nationwide, the reason his claim was declined was because he'd been sent text messages to his mobile. He says he was later told Nationwide hadn't sent any text messages and his claim had been rejected on the basis of the pattern of spending/account activity and Nationwide's belief that it was him who called to order a new PIN and unblock the card when its system had identified the activity on the account as suspicious.

He wants to know if Nationwide had checked CCTV, provided this service with a copy of the identification taken in branch and used voice recognition software as he doesn't think it's enough for Nationwide to rely on just staff thinking the caller sounds like him or notes on the system to say his identification was checked. This doesn't conclusively prove it was him who visited the branch or made the calls to Nationwide.

Mr A is adamant that this was not him. I've carefully thought about everything Mr A has said but I'm not persuaded this is the case. I agree with Nationwide and think it's more likely than not that it was Mr A who spoke to Nationwide. I say this because;

- Nationwide's security verification was successfully passed on several occasions.
- Of course, I accept it's possible, as Mr A has pointed out that someone could've obtained all his personal details from companies house. This potentially could've made it easier for someone other than Mr A to pass Nationwide's security checks over the phone. But when Mr A reported his card as lost on 18 January 2020, he also made a request for a PIN reminder. He was told this wouldn't be possible and he would need to call back to order a PIN once the replacement card is received.

- On 22 January 2020 a call was made to Nationwide requesting a PIN reminder. The caller told Nationwide when he reported his card as lost, he was told to call back after receiving it to order a reminder PIN. I'm afraid I don't think someone unknown to Mr A could've obtained this information in the way Mr A describes.
- Further, Nationwide also asked high-risk security questions – which I don't think someone unknown would've been able to easily pass. It carried out this additional layer of security to protect itself and Mr A. I appreciate Mr A is upset Nationwide has not shared what these questions were and he would like to know specifically what they are but I think it's reasonable for Nationwide to withhold the details of what these checks are as, in the wrong hands, these details could assist fraudsters looking to know how to get around its systems.
- And having listened to several calls that Mr A agrees he did make to Nationwide coupled with the content of the disputed calls I do think it's more likely it was Mr A who spoke to Nationwide, not some unknown third party.

I note in his submissions; Mr A says had Nationwide obtained CCTV footage, it would've shown he didn't carry out the disputed transactions. Firstly, CCTV evidence is not available, and it would be wrong to make any assumptions about what it might or might not have shown. But given my current thinking, even if this were available, I don't think it would've made a difference to the outcome of this complaint.

I say this because, of course, it's quite possible that CCTV might have identified that someone other than Mr A made the disputed transactions. But what it wouldn't prove is whether this was done without Mr A's knowledge and permission. And the issue I need to decide isn't who physically carried out the disputed transactions, but rather were these authorised. It is also for these reasons I've not ascribed too much weight to the difference in signatures on the withdrawal slip. Mr A didn't have to make the transactions personally in order to be held liable for them under the relevant rules. He can still be held responsible for them if he authorised the use of his debit card and looking at all of the evidence in this particular case, I don't think I could be as sure as I would need to be to say that Mr A wasn't involved.

Similarly, I've taken on board what Mr A has told us about being at work when the disputed transactions took place, but again this doesn't mean that Mr A wasn't aware of the spending nor does it eradicate the possibility he provided his card, PIN and security details to someone.

Mr A says Nationwide have not taken into consideration that he's been the victim of fraud recently; his post had been intercepted by an unknown third party and other banks have accepted his claim. He can't understand why Nationwide have not taken this on board. Whilst I can see why Mr A might feel this way, I'm afraid each claim is decided on its own facts. So, even if another bank has refunded money to Mr A and/or accepted his claim, it doesn't automatically entitle him to a refund from Nationwide nor does this alone change the outcome reached by Nationwide or the one that I have reached of this complaint.

And while I'm aware of Mr A's concerns about the extent and scope of Nationwide's investigation, it's not my role to tell it how to investigate fraud cases. On the evidence I've seen, I'm satisfied the conclusion it reached wasn't unreasonable.

### *Account closure*

Nationwide is entitled to end its banking relationship with Mr A by closing the account he holds with it; just the same as Mr A can choose to end his relationship with Nationwide. But it must do so in a way, which complies with the terms and conditions of the account. I can see Nationwide followed those in giving Mr A 60 days' notice. I appreciate Mr A is unhappy with this decision but there's little for me to comment on here. Given Nationwide wasn't happy with the conduct of the account it decided to withdraw all facilities and it's done so fairly and reasonably.

Taking all the above into consideration I think that Mr A probably knows very much more about the use of his debit card than he has told this service or Nationwide. I'm persuaded that it's more likely than not, that either Mr A carried out the activity himself or shared his card and security information to allow someone else to carry out the disputed transactions. So it follows that I don't think Nationwide acted unreasonably or unfairly in holding Mr A liable for the disputed transactions and taking the decision to close his account.

### **My final decision**

For the reasons above, my final decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 October 2020.

Sonal Matharu  
**Ombudsman**