

The complaint

Mrs M is unhappy that Nationwide Building Society won't refund money she lost as a result of scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving the reasons for my 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.

Having done so, I've reached the same outcome as our investigator for these reasons:

- Firstly, I'm sorry to hear about what happened to Mrs M. She's undoubtedly a victim here of a cruel and convincing scam. But my role is to decide whether Nationwide should refund her losses.
- The starting position under the Payment Services Regulations 2017 (PSRs) is that Mrs M is liable for payments she authorised.
- To consider payments authorised, the PSRs explain that Mrs M must have given her consent to the execution of the payment transactions – and that consent must have been in the form, and in accordance with the procedure, agreed between her and Nationwide.
- So, the concept of giving consent under the PSRs simply depends on whether Mrs M went through the agreed steps to make the payment. It's not the case that she needed to be fully aware of the payment details.
- Here, the banking records confirm that Mrs M's device went through the steps for making the payments. Mrs M recalled she was told to download remote access software by the fraudsters – she thinks they took control and made the payments. She's spoken to several organisations who have supported this.
- Nationwide submit that's not possible – the device Mrs M has meant it would've only been possible to view what she was doing with this remote access software; it didn't allow someone else to control her device.
- I can't be exactly sure what happened. But civil disputes like these are only ever decided on the balance of probabilities – in other words, what's *more likely than not* to have happened.
- Our service's experience aligns with Nationwide's submissions that, while remote access scams often do involve controlling a victim's device, it's very difficult to

remotely control the type of device Mrs M has. And I note the software's website also confirms that while you can use it with her device, remote control isn't supported.

- It follows that I think it's more likely than not that Mrs M was coached into following the steps to make the payments by the fraudster. And while I appreciate she might not have understood what the implications were, given she went through the form and procedure to give consent, I'm satisfied they're authorised for the purposes of the PSRs.
- While the starting position is that Mrs M is responsible for payments she made, I've also considered whether Nationwide should've completed fraud checks before processing the payments. That might be the case when a payment instruction looked particularly risky or uncharacteristic compared to her usual running of the account.
- Here, the disputed payments both went to another account in Mrs M's name, which was confirmed to Nationwide when the payment was instructed. Mrs M submits that ought to have stood out as unusual as she'd not done that before. But I can see how it would've reassured Nationwide that the money was staying in her name.
- Having reviewed her statements, I also don't think the values are particularly at odds with payments Mrs M had genuinely made in the past – the amounts are similar to direct debits and shopping payments she'd made before.
- That's not to say it wasn't a lot of money for Mrs M to lose. But I must consider that Nationwide's duty is to make the payments she tells it too promptly. So it can't intervene with every payment. And here, while it's of course possible to distinguish these payments from others, I think they were still broadly in line with the level of spending it expected to see from her.
- I've also considered that Mrs M is, and was at the time, vulnerable. It's not clear whether Nationwide knew that, but either way, given all the other factors, I don't think this would've been enough to say it ought to have questioned the payments.
- Taking this all into account, I don't think it was remiss that Nationwide simply processed the payments in line with Mrs M's instructions.
- I realise how disappointing this will be for Mrs M, but having considered the matter carefully, I don't think Nationwide can be fairly held responsible for her losses.

My final decision

For the reasons I've explained, I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 25 April 2024.

Emma Szkolar
Ombudsman