

## **The complaint**

Miss P complains Nationwide Building Society (Nationwide) declined to refund a payment she says she didn't make or allow anyone else to make.

## **What happened**

On 14 January 2024, Miss P says she was at a caravan show and had used her card to make payments on her account. She told Nationwide she lost her card for a short period of time before it was returned to her by a third party. Later, she noticed a payment left her account for £100 that she says was unauthorised. She reported this to both Nationwide and Action Fraud.

Miss P believes during the time her card was lost, her card and/or PIN were cloned and used to make this disputed payment. Initially, she couldn't say how her card PIN was compromised as it wasn't written down or shared with anyone else.

Nationwide declined to refund Miss P. It said the fraud claim was declined correctly as it couldn't establish a point of compromise for her card and PIN.

Unhappy with Nationwide's response, Miss P referred her complaint to our service. One of our investigators looked into Miss P's complaint and didn't uphold it. In summary they thought Nationwide was fair in its decision not to refund her as it couldn't establish a point of compromise behind how someone could have carried out the payment with the use of the card's physical chip and PIN.

Miss P didn't agree. She said having looked online, she couldn't see the merchant's name existed. Initially she thought her card and PIN had been cloned, but more recently she thinks her PIN was read from a machine. She recalls entering her PIN for one of the genuine payments she made prior to the disputed one, but says she was told this was declined which is why she then paid via the contactless method. She also added that because she reported this to Action Fraud, this shows she's an innocent party to what happened. Because Miss P didn't agree, the matter has been passed to me to decide.

## **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'm not upholding this complaint. I'll explain why.

The dispute here is around whether Nationwide has acted fairly in treating the £100 payment as authorised. Where there is a dispute between both parties about whether the payment was authorised, my role is to decide what's more likely to have happened based on the information that is available.

I've started by considering what authorisation means under the Payment Services Regulations 2017 (PSRs). One part is that the payment must have been properly

authenticated. Nationwide has provided records showing the payment steps were completed properly with the use of the chip from Miss P's card, and with the PIN being entered correctly. I'm satisfied therefore the payment was authenticated correctly.

Correct authentication isn't enough to deem the payment was authorised. The PSRs say that Miss P must also have given her consent to the execution of the payment. In practical terms, it means Miss P consents to a payment by completing the agreed steps (such as entering her card into the merchant terminal and entering her PIN), or allowing someone else to.

Miss P said she didn't make this payment, nor allow someone else to make it. For an unauthorised third party to have made this payment, they would have needed access to her card and PIN. Miss P told Nationwide she dropped her card, and it was later returned to her, so I accept there was an opportunity where someone could have used her card whilst it was out of her possession. So I have considered how someone could have obtained her PIN to have made this payment.

Having considered Nationwide's reports, Miss P had made three prior genuine payments on the same day as the disputed payment, but these were carried out using the contactless feature. There were no prior declined payments before the disputed payment, which suggests to me that the person that carried it out knew her PIN. Miss P said her PIN wasn't known by anyone else or written down, but she believes her PIN was cloned or may have been learnt from a machine where she says she recalls using her card and PIN for a payment prior to the one she's disputed. I've thought about this carefully, but I don't think that is the likely scenario here.

The evidence I have seen shows that Miss P hadn't used her PIN before the disputed payment took place, so I can't see how someone could have learnt her PIN where it hadn't been used beforehand. From the reports, I can see there was an undisputed chip and PIN transaction on the same day, but this took place after the disputed payment, so wouldn't explain how the PIN could have been compromised.

The scenario Miss P has more recently explained is a sophisticated one, that her PIN was obtained through a fraudulent merchant device for fraudulent purposes. However in this case there were no further attempts to use Miss P's card after the disputed payment was carried out, so only the one low value payment was made. I find it highly unlikely that a third party would have gone to the lengths of doing what Miss P is suggesting, to have then only made the one payment before returning the card.

I appreciate Miss P has said that she hasn't found anything about the merchant online, but that doesn't mean the payment was therefore unauthorised – it's not unusual for small businesses to not have an online presence. Likewise just because Miss P reported the disputed payment to Action Fraud, doesn't therefore mean Nationwide is liable to refund the payment. Instead I have to decide, given the evidence provided and what the PSRs set out, whether Nationwide is liable to refund Miss P.

Overall bearing in mind what I've explained above, I'm persuaded Nationwide has acted fairly in concluding the payment was authorised by Miss P. It follows that I don't consider Nationwide liable to refund her.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 17 May 2024.

Timothy Doe  
**Ombudsman**