

The complaint

Miss E complains that Nationwide Building Society (“Nationwide”) failed to refund transactions she didn’t recognise.

What happened

Miss E explained that she was alerted by Nationwide about possible fraud on her account after they identified a suspicious transaction. Miss E contacted Nationwide who blocked her card and re-issued it.

There were a number of unrecognised (disputed) transactions identified by Miss E, several to a merchant I’ll refer to as A. Miss E held a legitimate account with A. There were a number of other transactions made using the card details for internet-based transactions. Some of these were reversed by the applicable merchant.

The full list of transactions is well known to both parties, so I won’t repeat them here. I’ll only refer to those that are necessary to explain the issue raised by Miss E.

Once Miss E had raised the transactions with Nationwide, they provided a temporary refund while they looked further into what had happened. Miss E also raised the matter with A who later said her account had been used by unknown third parties to make the disputed transactions.

Nationwide identified that one of the payments they’d refunded was never claimed by the merchant, meaning that part of the refund they’d provided was never paid out from Miss E’s account and it was agreed with her that they take this back.

Miss E raised a complaint with Nationwide concerning their handling of her issue as there were disputed transactions that were still outstanding. Miss E was concerned that the temporary refunds were going to be taken back.

Nationwide finished their complaint investigation and wrote to Miss E informing her that they were still within the timescales of the process they were using to challenge the payments (Chargeback). They also advised Miss E they were returning funds to A because they (A) had provided evidence that Miss E was responsible.

A repeated their earlier message to Miss E that they’d informed her bank (Nationwide) to find in her favour regarding the dispute she’d raised.

Miss E then raised her complaint with the Financial Ombudsman Service because she believed Nationwide hadn’t acted fairly towards her and they’d left the situation with her refunds unfinished.

An investigator was assigned to the complaint and asked both parties for information about the situation. Miss E provided numerous details concerning her interaction with both Nationwide and A about her situation.

Nationwide provided details of their own investigation and copies of correspondence. In their

report to our service, Nationwide asserted that:

“The fraudulent transactions which left Miss E’s account have been fully refunded within a timely manner as such, Miss E is not out of pocket.”

Additional correspondence provided by Nationwide included a letter sent to Miss E (some two weeks after they asserted the situation was resolved) stating that one of the transactions was still being investigated and asking her to respond.

Nationwide responded to a later request made to them by the investigator where they stated that all the amounts disputed by Miss E were still being investigated and hadn’t yet been refunded.

Following a review of the available evidence, the investigator concluded that Nationwide had acted unfairly towards Miss E in the way they handled the issue and that the transactions she’d disputed were likely unauthorised.

It was recognised that Nationwide had provided a temporary refund, but this should now be made permanent, but they’d also caused distress and inconvenience to Miss E and should pay her £150 to recognise the impact this had on her.

Nationwide later disagreed that they’d mishandled the situation. They confirmed that the refund for the outstanding transaction had now been left on Miss E’s account because the merchant hadn’t responded (presumably to the Chargeback process).

As no agreement could be reached, the complaint has now been passed to me for a 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.

Putting things right

Miss E told Nationwide that she wasn’t responsible for the payments that were identified on her account after the fraud alerts were sent out. Nationwide provided a temporary refund which meant that Miss E was protected from the initial loss of her funds. Nationwide then blocked and re-issued her card to further protect her account. At this point, I think Nationwide’s actions were an appropriate way for them to deal with the issue raised by Miss E.

Nationwide then chose to use the Chargeback process to make enquiries with the merchants about the payments. This is one way for them to investigate the matter, but the overriding legislation here is the Payment Service Regulations 2017 (PSRs).

The basic position is that Nationwide can hold Miss E liable for the disputed payments if the evidence suggests that it’s more likely than not that she made them or authorised them, but Nationwide cannot say that the use of the card details for internet payments conclusively proves that the payments were authorised.

Unless Nationwide can show that consent has been given, it has no authority to make the payment or to debit Miss E’s account and any such transaction must be regarded as unauthorised. To start with, I’ve seen the bank’s technical evidence for the disputed

transactions. It shows that the transactions were authenticated using the payment tools issued to Miss E.

It's not our role to say exactly what happened, but to decide whether Nationwide can reasonably hold Miss E liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

It's apparent from the evidence provided by both parties that Miss E's account was taken over and her card details used to make several disputed transactions. A confirmed this on two occasions and advised her that they'd updated Nationwide about this. Another provider also reversed transactions at the time, understanding the payments were fraudulent. But, Nationwide don't seem to have taken these actions into account to satisfy the requirements of the PSRs – seemingly relying on the Chargeback process to deal with the lost funds.

I wanted to make it clear that, based on the evidence, I think it more likely than not that Miss E wasn't responsible for the transactions she's disputed, so they are considered unauthorised in respect of the PSRs. It follows that it's both fair and reasonable that Nationwide refund her. As the refunds were originally applied to Miss E's account, my understanding is that there are no further payments due to her relating to the disputed transactions.

In their updates to our service, Nationwide said the matter had been concluded and Miss E put back in the position she was in. But they later told her it was still ongoing with one of the transactions she'd disputed. Nationwide then told our service that all the transactions were still being investigated and couldn't yet be refunded. Nationwide's updates have been confusing and contradictory, and I can see why Miss E was left distressed about whether she was going to keep the temporary refunds.

I agree with the investigator's recommendation that Nationwide should pay Miss E £150. They caused her unnecessary distress and inconvenience with their contradictory communications and lack of clarity over whether they were holding her responsible or not.

My final decision

My final decision is that I uphold this complaint against Nationwide Building Society. They're now required to settle it as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 18 September 2024.

David Perry
Ombudsman