

## The complaint

Mr C complained because Nationwide Building Society refused to refund him for a £500 cash machine withdrawal which he said he didn't make.

## What happened

On 28 August 2023, Mr C was on the last day of a trip away from home. He went to a cash machine he hadn't used before, to take out some money in case he needed anything on his journey home. The machine he went to was one of a row of three machines.

Mr C put in his card and PIN. He said that at that point, a man nearby came up to him, put his hand on the machine, and told Mr C the machine wasn't working. So Mr C said he cancelled his request for £120, without receiving any money, took his card, and went to one of the other machines. He requested first £80, then £50, but the machine refused these. Mr C thought the machine wasn't working. He left, went home, and fortunately didn't need any extra money on his journey home.

But the next day, he saw that £500 had been taken from his account. Mr C contacted Nationwide twice that day. In the first call, he reported that he hadn't requested £500 and thought the limit was £250. In the second call, he told Nationwide about the man who came up to him and touched the machine. I don't have the call recording, but Nationwide's notes of the call state that Mr C told the adviser his age, and said he doesn't remember a lot of things. It turned out that the reason Mr C hadn't been able to withdraw £80 or £50 at the second machine, was that £500 had already been taken from Mr C's account, and this was the daily withdrawal limit. Nationwide gave Mr C a temporary credit while it investigated.

Nationwide refused Mr C's claim, because the bank which owned the machine told Nationwide that the machine had been thoroughly checked and there wasn't a discrepancy, and there were no funds left in the machine. As Mr C had reported that someone had told him the machine wasn't working, however, Nationwide said it would arrange for a challenge to the machine owner.

Mr C asked for CCTV, so that it could be seen who received the disputed £500 cash. He pointed out that at the time he'd only had £279.27 in his account. He said he hadn't requested a £500 withdrawal, which had put him in debt without receiving any cash. He told Nationwide that he was a pensioner and didn't have any excess funds.

Nationwide issued its final response letter on 27 September. It said that if the machine had processed a payment of £500 but failed to pay it out, this would have been reflected on the roll data. The machine's roll had shown that it had paid out 24 x £20 notes, and 2 x £10 notes, making £500 in total. So Nationwide declined Mr C's appeal. It told Mr C that it would re-debit the £500 from his account.

Mr C asked again for CCTV from the bank which owned the machine. He said the police would need to be involved to investigate potential fraud. He also asked if the debit could be postponed until after these investigations had concluded. In subsequent emails, he said he'd never known his daily cash withdrawal limit was £500. He asked for a lower limit, saying he'd

never withdraw that much from a roadside machine, but would have gone to a branch. He also said he found it difficult having to deal with so many different people at Nationwide.

Nationwide replied on 9 October. It said it had listened to its calls with Mr C, and Mr C had been told it wasn't possible to have a lower daily limit. It also said that it had kept Mr C up to date during his complaint, and didn't agree he'd had poor service. But it accepted that Mr C had been told on one of the calls that he could raise a fraud claim if his cash machine claim were declined. This wasn't correct, because Mr C still had his card which had been used for the disputed withdrawal. Nationwide paid Mr C £50 as an apology for this incorrect information.

Mr C remained unhappy. He said that Nationwide had a duty of care to its vulnerable customers, especially elderly pensioners, to protect their interests so they shouldn't fall victim to potential fraud. Mr C said he didn't know why Nationwide had credited his account with £50, nor had he requested this. He said he respectfully asked Nationwide to take back the £50 and he'd ask this service to investigate further.

Nationwide took away the £50 it had paid Mr C as its apology for giving him incorrect information.

On 18 December, it wrote to tell Mr C it would be re-debiting the £500 credit. Mr C replied on 21 December asking for the re-debit to be postponed until after he'd had the outcome from this service. Nationwide re-debited it on 27 December, and replied to Mr C on 2 January 2024, saying it had made the position clear and wouldn't be replying to any further correspondence from Mr C about his complaint.

Mr C contacted this service.

Our investigator didn't uphold Mr C's complaint. She said that the machine records showed that £500 had been requested and dispensed. Also, the machine hadn't shown the £120 which Mr C had said he'd requested then cancelled. Nor had it shown any errors either before or after the transaction in Mr C's name. The transaction immediately after Mr C's had been very short, and Nationwide had responded to the investigator's query about this by saying that it was "*good*." So she couldn't link this to the third party who had been around Mr C.

The investigator also explained that Mr C's request for Nationwide to obtain CCTV couldn't be enforced. Instead, Nationwide had provided a statement from the machine owner confirming that the machine balanced. Nationwide also said the machine owner would have advised if there had been any faults.

Mr C didn't agree. His daughter represented him, and said that the Financial Conduct Authority (FCA) regulations said that a bank should provide a refund in the event of fraud or other unauthorised transactions. She said there wasn't sufficient evidence – in other words, CCTV – about who the money had been given to. She asked for confirmation that this service had contacted the machine owner and Nationwide for the CCTV footage – because she said the machine owner had told her this service could request it. She also asked what the investigator had meant by saying the subsequent transaction had been "*good*."

Mr C's complaint was passed to me 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.

I recognise that Mr C is very distressed about this. I understand this, and have looked at the evidence carefully, and I requested more information.

### *Regulations, and CCTV*

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 what I have to decide is whether it's more likely than not that Mr C authorised the disputed £500 payment himself.

Mr C is very keen to have CCTV evidence, which he believes would show who took the £500 cash from the machine. In practice, CCTV rarely shows what a customer hopes it will. To be useful, it would need to show both the face of the person at the machine, and at the same time exactly how much was dispensed by the machine, and also clearly show who was taking the cash. Showing all of these isn't very likely.

Importantly, CCTV footage is normally not kept for very long, and not for more than 90 days. As Mr C's disputed transaction took place on 28 August 2023, it would in any case have been erased by the time Mr C brought his complaint to us. I realise this is frustrating, but as I've explained, CCTV is very rarely definitive even when available. So I've taken my decision on the information I do have, including the computer records from the machine itself, and the evidence put forward.

### *Technical evidence*

I looked at the technical computer evidence which the other bank sent to Nationwide. Cash machine computer records show all attempted transactions, and there's no record of a £120 request, in line with what Mr C said he requested and then cancelled. The records would have shown if this had been requested then cancelled and the card withdrawn.

Mr C had told us that there were three machines in a row, and he also told us about the man who came to the machine Mr C was using. Mr C said he went to another machine after the man came up to him. I wondered whether the man who came up to Mr C might have been a fraudster, who might have seen Mr C put in his security details. So I asked Nationwide to ask the machine-owning bank for the technical computer logs for the other two machines. I've now looked carefully at all three machine records.

### *The machine on which the disputed £500 withdrawal was made*

The machine on which the disputed £500 withdrawal was made doesn't show any other attempted withdrawals – not for £120, or £80, or £50.

It shows the transaction on Mr C's account started with the card being put into the machine at 13:05:57. The machine records that at 13:06:11 the user requested a £500 withdrawal with a receipt. At 13:06:18 the machine sent a request to Mr C's Nationwide account, and received a response confirming the transaction. The machine records that at 13:06:29, two £10 notes and 24 x £20 notes were dispensed, ie a total of £500. The card was removed at 13:06:46.

After Mr C's card was withdrawn following the £500 being dispensed, within 14 seconds another card was put into the machine.

Under two minutes after the very brief transaction, another card was put into the machine and there was a steady stream of customers using the machine after that. This doesn't tally with Mr C's recollection that there was no-one else around apart from the man who came up to him and said the machine wasn't working.

### *The other two nearby machines*

One of these machines shows no transactions at all using Mr C's details.

The other one does show a record using Mr C's details. His card was put into the machine at 13:07:17. £80 was requested, but the user cancelled the request at 13:08:04, and no money was dispensed. There was activity by other users both before and after this record.

### *What might have happened at the cash machines?*

I've very carefully considered what's most likely to have happened here. First, I accept that Mr C firmly believes what he told Nationwide and this service.

However, the independent evidence from the computer record which was sent to Nationwide, doesn't tally with what Mr C said happened:

- Mr C said he requested £120 from the first machine, which he cancelled, and went to the next machine where he tried to withdraw £80 then £50, both of which were refused.
- The computer evidence shows that the first transaction using Mr C's card was the successful £500 withdrawal at one machine, where the card was removed at 13:06:46 after the cash was dispensed. The second activity on Mr C's account took place almost immediately at another machine, where the card was entered for an £80 withdrawal at 13:07:17 and the user cancelled it at 13:08:04. There's no record of any £120 transaction or attempted transaction at any of the machines.

I've considered how the computer evidence might tally with the man coming up to the machine, who might have been a fraudster. But I can't see how this could have happened.

If the cancelled £80 withdrawal had happened first, I can see that there are ways in which a fraudster might perhaps have obtained Mr C's details from that, and then used them to make the disputed £500 at the next machine. But the successful £500 happened first.

I also considered another possibility. Mr C might have entered his details for the first, successful, £500 withdrawal, and then gone to the other machine before the cash was dispensed, because of the interruption by the man who told him it wasn't working. If so, the man might then have taken the cash himself. But there are problems with this too. First, Mr C said he never requested £500 and in any case thought his limit was £250. Secondly, as is normal with cash machines, the records show that the cash was dispensed before the card was returned. Mr C had his card for the £80 transaction which he cancelled. So he must have been at the machine at the time the £500 cash was dispensed from the machine slot.

### *Other factors*

I've seen Mr C's statements for the three months prior to the disputed transactions, and I can see that there wasn't a pattern of large cash withdrawals. So this withdrawal was unusual for Mr C. But that in itself doesn't necessarily mean it was fraudulent.

I've also seen that Mr C's account had a £500 overdraft facility, which enabled the disputed £500 to be made even though it sent him into a negative balance. I asked Nationwide when this had been set up, and Nationwide sent evidence showing it had been set up in June 2014. So I can't say that Nationwide should have blocked the £500 withdrawal on the grounds that it took his balance to a negative balance of £-220.73, because that was within his previously agreed overdraft.

I've noted above that although Mr C said there was no-one around, the computer records show that all three machines were busy. The transaction before the £500 debit finished some nine minutes earlier, but afterwards, and at the other machines, there were several other transactions in quick succession. This tallies with it being a bank holiday Monday.

I've also noted above that, although I don't have the call recording, one of Nationwide's customer notes records that, during Mr C's second phone call on 29 August, he gave his age and *"said he does not remember a lot of things."*

I also asked Nationwide about its comment that the transaction after the disputed one was *"good."* It replied that it means the machine owner had said there were no recorded malfunctions, and no other complaints or disputes raised against the machine for transactions on the same day.

#### *What's most likely to have happened*

I consider Mr C has told Nationwide and this service the truth, as far as he can recall it. The third party who came up to the machine initially made me suspect that individual might somehow have defrauded Mr C. So I've looked in detail at what might have happened, as I've set out above. But given the impartial technical computer evidence from the three machines, for the reasons above I can't see any way in which someone other than Mr C could have obtained the £500 which was definitely dispensed from Mr C's account that day, after his genuine card and correct PIN were entered. This means that I can't uphold Mr C's complaint.

I note that Nationwide paid Mr C £50 compensation for incorrectly telling him that he could raise a fraud claim if his cash machine claim were declined. Mr C asked Nationwide to take this back, which it did. I suggest that Mr C might wish to change his mind about this, because the compensation was given for incorrect information Nationwide provided. It wasn't instead of giving him the refund he believed he was owed. If Mr C does decide to accept this compensation, which fairly reflected a Nationwide error, I consider Nationwide should honour its original offer. I leave it to Mr C to approach Nationwide if he wishes to accept that.

#### **My final decision**

My final decision is that I do not uphold this complaint. I leave it to Mr C to talk to Nationwide about its £50 compensation offer for the incorrect information it provided to him about raising a fraud claim if his cash machine claim were to be declined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 September 2024.

Belinda Knight  
**Ombudsman**