

## **The complaint**

Mrs O has complained that National Westminster Bank Plc (NatWest) won't refund transactions she says she didn't make or otherwise authorise.

## **What happened**

Both sides are most familiar with the case, and too many details might harm the anonymity of the decision, so I'll summarise what happened in brief.

In May 2023, Mrs O was unfortunately incapacitated. She gave a family member control of her bank account so that they could pay her bills for her. But between May and November 2023, they spent most of the balance across her savings account and current account.

Mrs O has complained about NatWest not blocking or refunding the extra payments the family member made.

Our Investigator looked into things independently and didn't uphold the complaint. Mrs O appealed, so the complaint's 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.

First of all, I understand that Mrs O was victim to a crime by her family member, when she was already in a very stressful situation, for which she has my sympathy. I appreciate this cannot have been an easy time for her, and I appreciate why she would like her money returned. I'm grateful to Mrs O and her representative for being open and candid with our service about how this matter made her feel. It's worth keeping in mind that it's the family member who carried out the payments, and so it's the family member who's primarily responsible for the spending and who really owes Mrs O her money back. But I can only look at what NatWest are responsible for.

Broadly speaking, NatWest need to refund unauthorised payments, whereas they can hold Mrs O liable for payments which were authorised. This includes payments which *appeared* to have been made with her authority – this is known as "apparent authority".

Essentially, under the relevant rules, if one willingly gives a person the ability to make payments on one's account, such that they can authorise transactions on one's behalf and will appear to have one's authority, and if one does not take the necessary actions to revoke that ability, then that person is effectively acting as one's agent. One is then responsible for that person's spending – even for spending which one might not have asked them or wanted them to make.

So, for example, by giving the family member her card and PIN, Mrs O gave them the ability to act as her agent and make payments on her behalf. And until she concretely removed that ability – for example, here she cancelled and replaced the card in November 2023 – Mrs O remained liable for the family member's resultant spending. Even if Mrs O only intended for them to pay certain bills, I'm afraid she's liable for all the spending they did using the ability she'd granted them. Essentially, we can't hold NatWest responsible for that spending.

I do understand why Mrs O would have liked NatWest to have blocked the spending, and I understand her thinking around that point. But while banks should be on the lookout for potential fraud, a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. The starting position in law is that banks are expected to process payments which they're authorised to make.

Here, while the payments in question added up to a very substantial amount, they were spread out across many months. So the spending on any given day was not quite so high or exceptional that I'd have expected the amounts to have particularly stood out to NatWest. And while I appreciate the savings account had not been withdrawn from in the period prior, it's not unusual for customers to suddenly spend savings – indeed, the purpose of a savings account is often to save up for some time and then eventually spend. The transfers went to a UK account of a family member who was also paying sums into Mrs O's account. And Mrs O's account's security was not bypassed – the payments in question were properly authenticated, such that it would have looked like it was Mrs O making them. Overall, I can't fairly say that NatWest necessarily needed to stop the payments.

So while this is a difficult message for me to give, and I know it's a difficult message for Mrs O to receive, I cannot fairly hold NatWest responsible for the loss here. I understand that, as the party ultimately responsible for the payments, the family member is slowly trying to repay the money they took. I hope they are able to resolve things with Mrs O.

### **My final decision**

For the reasons I've explained, I do not uphold this complaint against NatWest.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 21 October 2024.

Adam Charles  
**Ombudsman**