

## The complaint

Mrs E and her representative say Nationwide Building Society (“Nationwide”) refuses to refund her for transactions on her account she says she didn’t authorise.

## What happened

Mrs E says she broke her hip and was taken to hospital by ambulance on 7 January 2023. She remained in hospital until 8 March 2023, when she was transferred to a care home. However, Mrs E says between 11 January 2023 and 19 April 2023 several ATM withdrawals and card transactions took place on her account which she wasn’t responsible for. These amounted to £12,004.02 in total, which she says Nationwide should refund to her.

Nationwide declined Mrs E a refund on the basis that it was not convinced her card and PIN had been compromised. It said that even though Mrs E can’t find her card, there is no evidence of how anyone else could’ve known her PIN. Except for her husband who she says she had given her PIN to take out cash for her, so it believed either Mrs E or her husband, with her authority, had made these transactions.

Our investigator considered this complaint and decided to uphold it. Nationwide didn’t agree so the complaint was passed to me to consider. I issued my provisional decision on this complaint on 4 September 2024 setting out the following:

*“Having considered all the evidence thoroughly and the additional comments provided by Nationwide, I have provisionally decided not to uphold this complaint and I’ll explain why.*

*Generally speaking, Nationwide is required to refund any unauthorised payments made from Mrs E’s account. Those rules are set out in the Payment Service Regulations (PSR) 2017. Mrs E has said she didn’t carry out the transactions in dispute. So, I have to consider the relevant laws and provision to give my view on whether I think Mrs E did authorise the transactions or not.*

*Mrs E says when she was taken away in an ambulance, she left without her purse which contained her Nationwide debit card. Following this, she says her card was used without her consent to make 53 ATM withdrawals and some card payments. The ATM withdrawals would’ve required the actual card and PIN. This means, even if someone were able to take her card from her purse from her home while she was in hospital, they would also have needed to know her PIN.*

*Nationwide has provided evidence to show that the last genuine card and PIN transaction took place on 4th January 2023, which is seven days prior to the first disputed transaction. I think it’s unlikely someone would’ve shoulder surfed her at this point to learn her PIN, and then stolen her card from home without anyone noticing. Mrs E’s evidence is that she didn’t have her PIN written down anywhere and she hadn’t given it to anyone else besides her husband. So then, it seems more likely than not that these transactions were made by Mrs E or her husband.*

*Mrs E said she gave her husband her authority to use her card and PIN to make ATM*

*withdrawals for her. I've seen evidence that Mrs E was either in hospital or a care home during the dates of the disputed transactions and therefore unlikely to have been visiting ATMs. But this doesn't exclude the possibility that these transactions were made by her husband. Had they been made by her husband without her knowledge, I still can't hold Nationwide liable for them as she had given him "apparent authority" to do so, I'll explain what these means.*

*The PSRs 2017 allow for payment transactions to be initiated by someone acting on behalf of the consumer, and these are considered as authorised by the consumer if they did something to actively show they've given authority. In this case, Mrs E gave her husband authority to use her debit card by giving him the PIN. Under these principles, once authority is given it continues indefinitely, until the consumer takes actual steps to remove it. So, in this case, Mrs E could have terminated the authority given by taking back her debit card and requesting a new PIN from Nationwide. Instead, the debit card was left at the property which belongs to Mrs E and her husband, and she did not change her PIN. So, I am satisfied that Mrs E's husband still had her authority to use her debit card.*

*I've looked at the transactions disputed, and these do not look fraudulent in nature. I say this because the ATM withdrawals were spaced out throughout the three months, with many days passing without any withdrawals. Usually when a fraudster gains possession of someone's card and PIN they empty the account as quickly as possible before their access is restricted. I've also seen that the card payments in dispute are for low amounts – again this is not what we would typically see when a fraudster has access to someone's account. So, it seems more likely that these transactions were carried out by Mrs E or her husband with her apparent authority.*

*Overall, considering all the evidence in detail I think it's more likely than not that the transactions in dispute were carried out by Mrs E or her husband. However, I cannot hold Nationwide liable for the transactions had they been carried out by her husband without her knowledge as I am satisfied he had her apparent authority to do so. So, I will not be asking Nationwide to refund any of the disputed transactions."*

Mrs E and her representative have responded to my provisional decision, and I have considered their comments below.

### **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.

Mrs E and her representative say Nationwide should have flagged the transactions they dispute as being fraudulent. However, I don't agree and I'll explain why.

Banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. The question here is whether Nationwide should have intervened when the disputed transactions were being made. Usually we would expect large transactions, large transfers between accounts, oversees payments or transfers to an e-money provider to raise red flags. Or potentially unusual or suspicious payments – for example, multiple payments in quick succession perhaps including declined transactions or multiple payees.

Mrs E says the amounts withdrawn significantly increased and this should've been raised by Nationwide. While I agree the amount withdrawn over the months increased, I don't think the withdrawals are so out of character to have been raised by Nationwide's fraud department.

As I mentioned in my provisional decision the transactions were all carried out using Mrs E's card and PIN. They were also mostly ATM transactions which was regular activity on her account, at the same ATMs which had been used for other genuine ATM withdrawals. So, I am not persuaded that Nationwide should've done anything further here.

I know this outcome will come as a disappointment for Mrs E and her representative. I understand Mrs E hasn't been well, and for that she has my sympathy. However, for all the reasons outlined in my provisional decision, along with the points raised above, I am not upholding this complaint.

### **My final decision**

I am not upholding this complaint.

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

Sienna Mahboobani  
**Ombudsman**