

The complaint

Mr B has complained that Nationwide Building Society won't refund transactions that were made after he was robbed.

What happened

In late 2023, at around 3am, Mr B was robbed at knifepoint while on holiday. The robbers took his bank cards and phone, along with other items.

In the hours following this, a substantial amount of activity took place on Mr B's Nationwide account, including repeated failed logins, attempts to reset his security details, transfers from his savings, attempts to register and use Google or Apple Pay tokens under someone else's name, failed 3DSecure transactions, and rapid attempts to withdraw money and make point-of-sale payments. In the end, Nationwide allowed through about £2,900 worth of payments and related charges. The robbers also attempted to use Mr B's accounts with other banks, but with less success – his other banks blocked his account or reversed the payments. Eventually, Mr B woke a friend he was staying with and used their phone to report things.

Nationwide held Mr B liable for the payments in dispute, mainly as his PIN was used, and it didn't see a likely way that the robbers would've known his PIN unless he'd given it to them.

Our Investigator looked into things independently and didn't uphold the complaint. Mr B appealed, so the complaint's been passed to me to decide.

I sent Mr B and Nationwide a provisional decision on 28 August 2024, to explain why I thought the complaint should be partially upheld. In that decision, I said:

First, I understand that Mr B was subjected to a serious and distressing crime here, and so he has my sympathy. I appreciate this can't have been an easy thing for him to go through, and I certainly appreciate why he wants his money back. It's worth keeping in mind that it's the robbers who are primarily responsible for what happened, and who really owe Mr B his money back. But I can only look at what Nationwide are responsible for.

Broadly speaking, Nationwide are responsible for unauthorised payments. On the other hand, they can generally hold Mr B liable for the payments in dispute if the evidence suggests that he authorised them. This includes payments where Mr B gave someone the ability to make the payments on his behalf, such that they appeared to have been made with his authority – this is known as "apparent authority".

I'm reasonably satisfied that Mr B did not make the disputed payments himself, for a number of reasons. For example:

- *They are highly consistent with fraudulent use, using a rapid mixture of attempted cash withdrawals, point of sale payments, and online activity, frequently hitting the account's limits*
- *There were clear attempts to take over the account*
- *There were attempts to register and use Apple and Google Pay tokens in a third party's name*
- *There were attempts to keep using the account even after Mr B had blocked it*
- *There were attempts to use Mr B's other accounts as well, in a similar fashion*
- *Mr B provided clear, consistent, and plausible testimony about being robbed, backed up by his contemporaneous police report and him having to replace stolen items*
- *When Mr B called Nationwide to report things, it was from a friend's phone number rather than his own phone, and he's evidenced that he replaced the stolen phone*

The question, then, is how the robbers were able to use Mr B's account. Nationwide's technical evidence shows that the bulk of the payments in dispute used not just Mr B's genuine card, but also the correct PIN. And they were funded by transfers from his savings, made via his mobile app.

Mr B has explained that no one else knew his PIN before this, and he didn't write it down or otherwise record it anywhere. The PIN was not bypassed, and could not be taken from the card itself or the app. It's not likely or plausible that the robbers could've known that the PIN was based on Mr B's identification number from his old employer, and it's exceptionally unlikely that they simply guessed it. And Mr B had not made any payments using his PIN in the hours before the disputed activity, so there was no reasonable opportunity for the robbers to watch him enter it and learn it that way. It's similarly unclear how the robbers would've known enough of Mr B's online security details to access his mobile app.

Realistically, this leaves only one likely and plausible possibility: that Mr B gave the robbers the relevant security details, including his PIN. And it would be completely understandable for Mr B to do so – his life was far more important than his bank account.

However, under the relevant rules, if you willingly give someone the ability to make payments on your account, such that they can authorise transactions on your behalf and appear to have your authority, and if you do not take the proper actions to revoke that ability, then they are effectively acting as your agent. You're then usually responsible for their spending – even for spending which you might not have asked them or wanted them to do.

In this situation, by handing his card, phone, and security details to the robbers, Mr B would've given them the ability to undertake payments on his behalf. And in doing so, Mr B would've effectively allowed them to act as his agent and make payments – even if that's not what he intended to do, and even if he did so under duress.

Mr B did not then do anything which concretely revoked the robbers' ability to make payments on his behalf, such as reporting the matter and getting the account blocked, until around 11:30am. So under the Payment Services Regulations and the terms of his account, Mr B could be held responsible for the spending that the robbers did until that point. While I completely sympathise with why Mr B might have given the robbers his security details, under the relevant rules, Nationwide are not generally responsible for payments made with the customer's authority – even if that authority was given under duress.

With that said, this matter does not end there.

Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider that Nationwide should have fairly and reasonably:

- *Monitored accounts and payments to counter risks such as fraud;*
- *Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;*
- *In some circumstances, taken further steps or made further checks before payments went out, or even blocked the account, to help protect customers – irrespective of the type of payment involved.*

The disputed activity should've stood out as being remarkable. There were hours of rapid and repeated failed logins, attempts to reset the details, failed 3DSecure transactions, other declined payments, cash withdrawals at or over the limits, flags from the fraud system, attempts to rapidly drain the account, and even an attempt to link Mr B's card to someone else's Apple and Google Pay, in the early hours and in a foreign country. I've reviewed Mr B's account activity in the time leading up to this, and I can't see any comparable activity. Nationwide should have intervened at least by 10am, by which point all the above had happened, including a recent series of rapid failed attempts to take large amounts, and its own fraud system had identified that the account was clearly at risk.

Nationwide did send a text to Mr B's phone, asking whether recent activity was genuine. But that was clearly not a proportionate response to a possible account takeover where Mr B's phone was being used to facilitate the suspicious activity. Given that Nationwide had very good reason to be concerned about an account takeover, it should really have blocked the account until it could speak with Mr B directly. Indeed, I can see that with other accounts of Mr B's, the bank identified that this was an account takeover, tried to get in touch with Mr B, and put a block in place when they couldn't speak to him. So this reinforces that that would've been an appropriate response.

Had Nationwide intervened and attempted to make person-to-person enquiries with Mr B, it would have most likely found that it could not get in touch with him, as the robbers had his phone – much like how the other bank couldn't. Nationwide then could have prevented the loss that followed.

So I currently find that Nationwide bears some responsibility for the loss from 10am onwards. This makes up almost all of the loss. Indeed, it's surprising that Nationwide allowed so much spending to take place considering the activity which preceded it.

I must also think carefully about Mr B's role in what happened and his own responsibilities. Again, I can completely understand why he might have given the robbers the ability to access his account – which is the only likely possibility I've found – and I do understand he would've been in shock. But it would mean Mr B reasonably knew that robbers had access to his bank account. And he was staying with friends whose phone he could – and later did – use to report this to Nationwide and mitigate his losses. But instead, he slept and waited many hours to block his account. I'm afraid I do need to explain that Mr B had some responsibility to keep his account safe and to report this matter without undue delay. And while Nationwide were wrong to allow the payments through after 10am, equally Mr B's undue delay also allowed those payments to happen.

So I currently find that Mr B should still be liable for 50% of the loss from 10am onwards.

I'll talk about both sides' responses 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.

Mr B thanked us for the provisional decision, but wanted to clarify that he did not go straight to sleep after the robbery, as he believes he was in shock at the time. He felt Nationwide should be wholly responsible for the transactions it failed to block despite the clear signs of fraudulent activity. I am grateful for the clarification, and again wish to reiterate my sympathy to Mr B for being subjected to a serious crime. With that said, I'm afraid that whether Mr B was asleep for all the hours in question or not, he would've reasonably known that robbers had access to his account, and he was able to wake his friend and borrow a phone to stop this, but he waited an undue amount of time to do so. While Nationwide's failure to block the account allowed those later payments through, equally so did Mr B's undue delay. So it is fair for each party to be held 50% liable for that loss.

Mr B questioned whether it was fair to allow more evidence at a late stage and change the outcome based on that evidence. To clarify: yes, that is broadly how we operate. We can reasonably extend deadlines or allow reasonable leeway for both sides to provide evidence before the final decision. And as we make our decisions based on the evidence at hand, it makes sense that we take said evidence into account.

Nationwide reiterated that there was no way the PIN and online security details could've been compromised other than if Mr B had made the payments or given those details away. But I already took account of that in the provisional decision. As set out before, we can be reasonably satisfied that Mr B did not make the payments himself, given the hours and hours of rapid and repeatedly failed logins, attempts to reset the details, failed 3Dsecure payments, other declined payments, cash withdrawals at or over the limits, flags from the fraud system, attempts to rapidly drain the account, attempts to link Mr B's card to someone else's Apple and Google Pay, attempts to take over the account, attempts to keep using the account after Mr B had blocked it, attempts to use Mr B's other accounts in a similar fashion with a clear pattern of fraud, the activity on his other accounts being identified and dealt with as fraud, Mr B's plausible testimony about being robbed, his actions in reporting the matter and replacing stolen items, and his use of his friend's phone instead of his own. That leaves one most likely and plausible possibility: that, despite Mr B not recalling doing so, he gave the PIN and security details away while under a threat to his life, which would've been a completely understandable thing for him to do.

Lastly, Nationwide pointed out that Mr B had initially chased the robbers, which it felt showed he wasn't scared for his life. But it seems unsurprising for someone to experience a surge of adrenaline and act impulsively or unusually when in shock or in a traumatic situation. I don't find this one detail to be of particular significance.

Otherwise, neither side sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusions as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct Nationwide Building Society to:

- Refund 50% of the loss from the disputed payments and their related charges, made from 10am onwards. Essentially, this encompasses all of the disputed payments which went through, except for the £8.76 and £4.19 transactions, and one of the £179.64 withdrawals;
- Add simple interest at the rate of 8% simple per year onto the refund, payable from the date each partially-refunded payment debited until the date of the refund.

My final decision

I uphold Mr B's complaint in part, and direct Nationwide Building Society to put things right in the way I set out above.

If Mr B accepts the final decision, Nationwide Building Society must carry out the redress within 28 days of the date our service notifies it of the acceptance.

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

Adam Charles
Ombudsman