

## **The complaint**

Mr K complains Nationwide Building Society didn't refund him part of £21,120 taken from his account after his mobile phone was stolen. He also complains Nationwide allowed a fraudster to set up and empty a £5,000 overdraft facility. Mr K further complains about the poor customer service he received from Nationwide.

## **What happened**

I sent the parties a provisional decision in August 2024, in which I set out the following background information to the complaint and my provisional findings, as follows:

*Mr K explained his mobile phone was stolen in the early hours of 4 November 2023. He said a group of men approached him and asked to use his phone to make a call. Mr K said he agreed to this as the group seemed friendly but also described feeling pressure to help. When he tried to retrieve his phone, the group stopped him and showed weapons which they threatened him with. They then ran off with his phone.*

*Mr K said he thought the fraudsters might have observed him entering his passcode into his phone. Mr K said the only security on his phone was a passcode and his banking app was also protected by a passcode and/or Face ID. Mr K explained the passcode was the same for his phone and banking apps. Apple Pay was also set up on his phone.*

*He explained the group of men were all around him when he put his passcode into his phone, but also said he had not realised at the time the attention they must have been paying to him when he entered his passcode.*

*Mr K went straight home after his phone was stolen as it was late. He had access to a spare phone at home and after switching this spare phone on, saw substantial funds had already been transferred out of his accounts without his consent.*

*Mr K has provided evidence Find My Phone was disabled and his Apple ID password changed at 4.33am on 4 November.*

*Mr K explained he called Nationwide and explained what had happened. The evidence suggests this was after 7.00am. He described being 'immediately dismissed as lying'. He explained Nationwide terminated the call, so he called back. The second adviser told him to report the theft to the police, which he did.*

*Mr K said the fraudsters had also applied for a £5,000 overdraft which Nationwide approved. Mr K says these funds were then also transferred out of his Nationwide account, leaving his account close to £5,000 overdrawn.*

*Nationwide wrote to Mr K stating it couldn't see how someone would have known his details to log into his internet banking. Nationwide also said it didn't think it had done anything wrong. The letter explained Nationwide wanted Mr K to provide more details to its fraud team related to the criminal investigation by the police, including CCTV and police findings.*

*Mr K provided our service with a series of emails he has received from an investigating officer at the Metropolitan police service (MPS) during November and December 2023. The emails explained MPS had spoken with businesses where the fraudsters had attempted to use Mr K's phone to make payments. MPS had obtained CCTV and had identified suspects. Mr K also provided our service with evidence of the descriptions of the men he had provided to MPS.*

*Mr K explained the money had been transferred to another third party bank, where he held two accounts, before being transferred out. He explained he thought this was because there were additional security measures required to set up new payee's on his Nationwide account, but not on this third party account.*

*Mr K received a refund of £12,300 from the third party bank but was still overdrawn in his Nationwide account which accrued charges every month he remained overdrawn. Mr K claimed Nationwide owed him the further £8,820 which had been transferred out of his Nationwide account, but not refunded by the third party bank.*

*Our investigator thought Nationwide should refund Mr K £8,820 and pay 8% simple interest from the date the transaction to the date of the refund. Mr K accepted, but said he thought Nationwide should pay more due to the distress it had caused him.*

*Nationwide did not accept our investigators recommendation. It explained it hadn't received any evidence of the police investigation or that the funds had left Mr K's third party bank account. Nationwide wanted to know why the third party bank had not issued a refund for the full £21,120 transferred to Mr K's account with them.*

*As Nationwide rejected our investigators recommendation, this complaint has been passed to me to make a final decision.*

*Our service has since contacted the third party bank and obtained statements from both accounts Mr K holds with them for the period in question.*

### **My provisional findings**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I appreciate how strongly Mr K feels about his complaint. Although I may not mention every point raised, I have considered everything but limited my findings to the areas which impact the outcome of the case. No discourtesy is intended by this, it just reflects the informal nature of our service.*

*The relevant regulations here are the Payment Services Regulations 2017 (PSRs). 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.*

*From the evidence I have seen, including the contact he has had with MPS and the consistency of his account, I see no reason to doubt Mr K's version of events regarding the theft of his phone. Having read his account, I am sorry he had to suffer what must have been a very upsetting situation. I am satisfied, on balance, Mr K had his phone stolen having agreed to provide it to an unknown third party for them to make a phone call.*

*Where a phone is provided to a third party with potential access to banking services, I have to consider whether there is any suggestion of gross negligence. That is an action which is so reckless or negligent it could be considered unreasonable.*

*Mr K has explained he believes the fraudsters may have observed him entering his passcode into his phone, explaining the group were all around him when he accessed his phone. He further explained he did not realise at the time they were observing his passcode and confirmed the passcode for his phone was the same as his banking app passcodes.*

*I am persuaded the provision of this phone was with the explicit understanding he was trying to help this person whilst remaining in his presence and was solely for the purpose of using his device to make a call. There is no indication Mr K gave any consent for this individual to access his banking apps. It seems more likely than not Mr K fully expected to receive his phone back after the person had made his call, which sadly did not happen.*

*I therefore think there was a clear and plausible purpose for providing his phone to a third party. I do not think, having considered the circumstances carefully, Mr K's actions were so unreasonable or reckless to consider he was negligent. I have also considered the evidence Mr K provided which suggests the fraudster could have accessed his banking apps with his passcode as plausible.*

*Mr K has provided clear evidence he was a victim of a serious crime, I am also satisfied this evidence was also provided to Nationwide soon after the event. I have also considered the types and frequency of the transactions immediately after the theft, which were completely out of character for Mr K's usual spending. I also think, on balance, it is highly unlikely Mr K would have applied for a £5,000 overdraft in the circumstances. The evidence Mr K did not authorise these transactions is therefore compelling, on balance.*

*Having considered the evidence in detail, I am satisfied Mr K did not authorise these transactions or request the overdraft and has explained how the compromise of his device occurred. I appreciate Mr K has complained about Nationwide allowing the overdraft, but having considered the evidence, it is clear the fraudsters had access to his Nationwide account through his approved device and were therefore able to arrange this overdraft without further checks.*

*I do not think Mr K could have consented to either the transactions or the overdraft and am satisfied he should have been refunded for any financial loss associated with these fraudulent transactions.*

*When determining financial loss our service seeks to put Mr K back in the position he would have been in had the fraud not occurred. Since our investigator's recommendation and having considered Nationwide's comments to our recommendation, I have contacted Mr K's third party bank the funds were transferred to. This was to understand what happened to the funds once they had been transferred from Mr K's Nationwide account to his third party bank account.*

*The third party bank has provided our service with Mr K's statements for the two bank accounts he holds with them for the period in question. His first account shows four payments into it on 4 November 2023 from Nationwide totalling £21,120, which accords with the total fraud claimed. This statement also shows four transactions out on the same day, totalling £16,120. This was made up of two faster payments (transfers) to an unknown account totalling £11,060, and two transfers to Mr K's second account totalling £5,060. Two further payments out of this second account were made to an unknown account for a total of £1,240.*

*The third party bank explained it refunded £12,300 as it says this is the total loss to Mr K from his two accounts with them. This is calculated as the two transactions out of his first account totalling £11,060 and the two transactions out of his second account totalling*

£1,240. Having considered the statements, and the evidence I have seen, the rest of the £21,120 did not appear to leave Mr K's third party bank accounts.

This provisionally suggests to me Mr K has not suffered any financial loss over and above the £12,300, which has already been refunded. To be clear, it provisionally appears the rest of the £21,120 was not taken and remained in Mr K's third party bank accounts rather than his Nationwide account.

I am therefore pleased to see Mr K has not lost any funds and therefore cannot reasonably uphold his complaint for any financial redress from Nationwide for a financial loss. I accept these funds might not be in his Nationwide account, but they remained in an account solely administered by Mr K. Furthermore, I have checked and cannot see these funds have been fraudulently taken out of these accounts afterwards. Importantly, Mr K's third party bank agrees with this position, which is why it only refunded £12,300.

However, having provisionally decided there is no outstanding financial loss, I do think it is reasonable to consider other losses and potential compensation associated with the fraud Nationwide might be responsible for.

Mr K has asked whether the interest could be paid back on the overdraft he did not authorise. I can see Mr K had a balance in excess of £17,000 after he received his refund from the third party bank on 11 December 2023, this was in an interest paying account and could have been used to pay off the fraudulent overdraft at any time since.

The evidence I have seen shows Mr K was actively using this account throughout December 2023, with the balance increasing to over £20,000 by the end of that month. I can see no reason why, having been provided with a refund and having the remaining transferred funds in his third party bank accounts, he did not transfer these funds back to limit his losses.

However, I appreciate Mr K has been waiting for the outcome of his complaint for some time and had reasonably asked for the interest charged on the overdraft to be suspended whilst the investigation was ongoing. I have carefully considered this and balanced the fact Mr K could have paid off the overdraft, against the evidence Mr K did not authorise this overdraft or the transfers out of his Nationwide account in the first place. Having done so, I provisionally think on balance, it is neither fair nor reasonable to hold Mr K responsible for any interest, charges or fees that has occurred since the fraudulent transactions and overdraft applications were made on his Nationwide account.

Ultimately, I am satisfied he did not authorise this overdraft and whilst he could have taken some action to mitigate the impact, I believe on balance Nationwide should not benefit from this fraud and neither should Mr K be disadvantaged by it. I provisionally think the fairest outcome is Nationwide should not hold Mr K accountable for any interest, fees or charges associated with this overdraft.

I have therefore provisionally decided Nationwide should cancel, interest and fees associated with this overdraft, but Mr K will need to arrange with Nationwide a suitable date for transfer of funds from his third party account to clear the outstanding balance of the overdraft on his Nationwide account.

I now move on to the final part of Mr K's complaint. Dealing firstly with the letter sent 6 November which says Nationwide 'can't find how someone would have known your details to log on to the internet bank', and declined to refund Mr K. This does not take into account the clear evidence and information Mr K passed to Nationwide. Nationwide's contact notes state on 4 November 'Member has called as he was held at gun and knife point early this morning and had his phone stolen... at police station now [crime reference number

*provided]’ There is no recognition of the distress and upset this would have obviously caused Mr K and simply goes on to provide standard security advice. This letter lacks empathy and clearly did not address the issues well and I do not think demonstrates good customer service.*

*I also provisionally think Nationwide erroneously focused on Mr K providing evidence a police investigation was underway and suggested it needed to wait for the outcome of this investigation. I do not think this was good customer service either. Nationwide could have investigated and decided for themselves whether Mr K had made the transactions, it is for Nationwide to prove Mr K made the disputed transactions, Nationwide did not have to await the outcome of a police investigation.*

*I do not think the letter of 16 November addressed the issues raised. It simply apologised four times, explaining Nationwide were ‘sorry you’re unhappy’ before concluding there were no issues, again this letter reiterated the need for the police investigation and CCTV. I also think there was no empathy shown in this letter, despite that being two of the four points of complaint raised.*

*These are just some examples of where I believe customer service was poor and is not an exhaustive list. There are numerous emails on the file demonstrating how distressed and upset Mr K was at the lack of progress regarding the investigation.*

*I provisionally think the approach taken by Nationwide was poor and led to delays and therefore unnecessary distress to Mr K. Had Nationwide communicated with Mr K’s third party bank then I think, on balance, this complaint may have been resolved sooner and caused Mr K less distress and inconvenience.*

*For these reasons I have highlighted, I provisionally think Nationwide should pay Mr K £300 compensation for the inconvenience and distress it has caused him.*

*As this a provisional decision, I invite further representations from all parties.*

### **My provisional findings and the parties’ responses**

Mr K responded to my provisional decision. He said he didn’t think my provisional decision was fair, explaining Nationwide treating him ‘*horribly*’ throughout. He said he felt his concerns had been disregarded and feels he has been held accountable for an overdraft he did not ask for. He said his credit was ‘*in ruins*’ because of the issues. He asked whether Nationwide are going to rectify his credit record.

Mr K also said he did not think £300 was enough compensation for the distress and inconvenience caused by Nationwide not willing to help him and said he felt he was asked to investigate the issues himself. He explained this matter had caused him health issues which required medical intervention.

In response, Nationwide said it was sorry Mr K’s phone was stolen and it realised this would have been very upsetting for him and it was pleased to learn Mr K hadn’t lost the funds he had reported stolen.

Nationwide also did not agree with my provisional decision. Nationwide explained it was unaware Mr K has two accounts with the third party bank until my provisional decision and did not know the rest of the funds had been transferred to this second account. Nationwide also confirmed it had already refunded the interest charges on the overdraft when Mr K had previously requested this and provided evidence supporting this.

Nationwide agreed Mr K needed to repay the overdraft and said it would give 45 days grace for him to do this following my final decision. It also said Mr K could keep the overdraft facility (subject to credit review) if he wished, but this would be subject to its usual terms and conditions.

Nationwide explained it advised Mr K to report the matter to the police when he told it about the disputed transactions on 4 November. Mr K later confirmed he had reported the matter to the police. Nationwide said *'Given a crime had been reported we don't believe it is unreasonable to request police reports. Our fraud team has explained it was awaiting the police report as key information to understand the case'*.

Nationwide also argued that Mr K should have known from early December, when he received a refund from the third party bank, that the funds were not due back to him from Nationwide, in line with my explanation above. It therefore thought, as these funds were not owed by Nationwide to Mr K from this date, it could not be held accountable for delays and inconvenience and therefore could not be held responsible for any compensation for this distress and inconvenience.

I do appreciate Nationwide's logic here and the argument they have presented but having carefully reconsidered the complaint with these comments in mind, I disagree, and I shall explain why.

Following on from my provisional decision I have referred to DISP and the PSRs regarding timeframes and obligations when investigating such matters. I again could not find any reference suggesting a payment service provider should defer its decision or investigation into disputed transactions whilst it awaits the outcome of a criminal investigation. I think doing so created an avoidable delay which caused inconvenience and distress.

Nationwide wrote to Mr K on 6 November, two days after he reported the theft, stating it did not uphold his complaint. Very little detail was contained in this letter about any investigation.

This position was reiterated in its letter of 16 November. I have provided details of these letters before in this decision, so will not rehearse it here. This, I think, also does not appear to accord with the position Nationwide have suggested in its response, that it was waiting for information. It does suggest to me it was making a finding not to refund Mr K, causing unnecessary distress and inconvenience and putting the emphasis on Mr K to prove he didn't make the transactions.

Whilst I can understand a police 'report' may add weight to a complainant's case, I did not think in this case it was reasonable or fair to rely on this or delay further investigation pending such information. The evidence Nationwide needed to consider was regarding the way the disputed transactions occurred and whether Mr K had authorised the transactions inline with the PSRs. Again, I am persuaded there was significant evidence he had not authorised these transactions, but it appears Nationwide made its finding quickly after Mr K made his complaint. Nationwide then relied on Mr K to 'prove' criminality by provide information regarding the criminal investigation without considering the case in detail.

Furthermore, I also think it is also possible any criminal investigations could be subject to strict disclosure and intelligence principles which may mean it would not possible for information to be shared with any third party, or even the victim. I think in most cases, on balance, it would be highly unlikely any private individual would be able to obtain and provide CCTV from third party premises, as he was asked to do in the letter dated 16 November.

Such investigations can also take considerable time and it have not seen evidence Nationwide stipulated exactly what it wanted from MPS. I can see Mr K provided all he had including the updates he had received from the investigating officer. This would appear to be the extent of the police information he had.

For these reasons, I am still persuaded Nationwide could have done more and communicated better when investigating Mr K's complaint. As I explained in my provisional decision.

### **My final decision**

For the reasons I have given I am not upholding the main aspect of this complaint regarding the financial loss.

I am upholding Mr K's complaint regarding the poor customer service in relation to his complaint regarding the disputed transactions and require Nationwide Building Society to pay Mr K £300 for the distress and inconvenience it caused him for the reasons I have given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 30 October 2024.

Gareth Jones  
**Ombudsman**