

## **The complaint**

Mr F has complained Nationwide Building Society won't refund him for three transactions he didn't authorise.

## **What happened**

In July 2024 on a night out, Mr F was approached by men he didn't know. This fracas ended in Mr F's phone being stolen. He reported this to Nationwide the following morning.

There had been five transactions made using Mr F's Nationwide banking app as well as one purchase for travel. Two of the transactions had been transfers to two of Mr F's other accounts. The other three were to a newly-set up recipient, who banked coincidentally at one of Mr F's other banks. One of those three transactions for £2,000 was returned to Mr F's Nationwide account.

Mr F told Nationwide what had happened and believed they would refund him. As Nationwide believed Mr F had more than likely made these transactions, they wouldn't refund Mr F.

Mr F brought his complaint to the ombudsman service.

Our investigator believed there was sufficient evidence to show Mr F had been the victim of fraud after having his phone stolen. She asked Nationwide to refund him, along with £200 compensation for Nationwide's delay in reimbursing Mr F.

Nationwide wouldn't agree to this resolution. Although not being explicit, they felt Mr F could have been acting negligently by enabling a third party to access his phone and they didn't feel the transactions seemed fraudulent in nature.

Mr F's complaint has been referred to an ombudsman.

## **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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where

appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Mr F's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are other factors to take account of including whether Mr F has acted with gross negligence or intent to share his security details.

To help me come to a decision, I've reviewed the evidence Nationwide provided as well as Mr F's testimony. I've also seen evidence from the police confirming they were searching CCTV, without any success, to see what had happened to Mr F whilst he was out.

I'm satisfied there is sufficient evidence to show Mr F didn't authorise these transactions. I say this because:

- Mr F was out after drinking with colleagues in an area full of clubs, bars and restaurants. It's also the case that criminals target this area and would be looking for potential victims by either shoulder-surfing or threatening them.
- Mr F has told us he was in the midst of using his phone, and therefore his phone was open, when he was first approached by individuals he didn't know. The result of this was his phone was stolen. I can see there being a clear point of compromise for a third party to access Mr F's phone. I'm also aware that Mr F's access to his banking app was either through the use of biometrics or a passcode. The passcode matched the 6-digit code used to access his phone.
- Nationwide suggests "*spend not indicative of fraud*". I disagree. A new payee is set up in the early hours of the morning and three payments are made of £1,000, £500 and £2,000. Nationwide hasn't provided any reason why Mr F – if these transactions had been his – would make these. Nationwide's evidence confirms, despite their arguments otherwise, the passcode rather than biometrics was used to access their app. Whilst I appreciate only certain digits of the passcode were required, it wouldn't be beyond the criminals to remember Mr F's 6-digit phone code if they'd shoulder-surfed him. I'm satisfied these transactions resemble fraudulent activity.
- I see Nationwide has concerns about the two payments made to two of Mr F's other accounts. However, as our investigator has persuasively argued, it's more than likely fraudsters made these as they believed they'd be able to access Mr F's other banking apps, enabling them to transfer this money onwards. This didn't prove possible. I've seen evidence from one of Mr F's other banks providing a copy of a chat where the fraudster was unable to access Mr F's account with them despite attempts to do so.
- The following day there are two phone calls to Nationwide using Mr F's personal and secure details. Nationwide accepts this voice isn't Mr F's but they're not sure how the individual would have known all of Mr F's details. I can only confirm what seems obvious that they had access to Mr F's phone and all that would entail. I think it'd be difficult for any payment service provider to argue this constitutes gross negligence.
- It's also clear that the criminals tried to empty Mr F's Nationwide account (which had a substantial balance) in as short a period as possible which also matches what we expect from fraudulent activity.
- Nationwide has suggested there could be gross negligence, but they've not provided any clear evidence of this apart from their view there's no point of compromise. The

test for gross negligence is – as they know – a high bar and I don't believe it's been met here.

- I also note one of Mr F's credit cards was used fraudulently. Mr F has been refunded by his provider.
- I've considered whether Mr F could have lied to both his bank and our service. But there's no logic for this view. I've seen no reason to doubt Mr F's testimony which is backed up by the police and evidence from his other banks.
- It seems clear to me that Nationwide refused Mr F's claim on the basis that they couldn't see any compromise. I also can't pinpoint exactly how a fraudster obtained Mr F's passcode, but the PSRs don't require me to do so. It's worth stating that I'm satisfied, based on what I've said above, that there are scenarios which enable a third party to get hold of these.

I will be asking Nationwide to refund Mr F.

### **Putting things right**

Mr F lost £1,551.60 as the result of fraud. Nationwide will need to reimburse him. They will need to add 8% simple interest from 17 May 2024, the date of the disputed transactions.

I'm unsure why Nationwide has taken this attitude with Mr F's complaint. He's held an account with them for a number of years and has no previous fraud claims. I'm sure this has added to the distress of what happened. Like our investigator, I believe £200 for the trouble caused should be paid.

### **My final decision**

For the reasons given, my final decision is to instruct Nationwide Building Society to:

- Refund Mr F for the disputed transactions, amounting to £1,551.60;
- Add 8% simple interest from 17 May 2024 to the date of settlement; and
- Pay Mr F £200 for the trouble caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 16 June 2025.

Sandra Quinn  
**Ombudsman**