

The complaint

Mrs H complains that Nationwide Building Society (“NBS”) failed to refund transactions she didn’t recognise.

What happened

Mrs H first noticed an issue with her account in October 2023. She reported that it had significantly less cash in it than she expected after the account had received a large payment a year or so earlier. At the time, Mrs H lived with a close family member I’ll refer to as V.

It later transpired that V had obtained access to the account by registering a new device and adding Apple Pay to it. This took place in early 2023 and between then and October, around £60,000 was reported to have been either spent or transferred into V’s account (also held with NBS).

NBS were asked to refund the losses based on Mrs H’s assertion that she hadn’t given permission for V to use her account, or allowed access to her security information, including logon details, or access to her phone and a personal identification number (PIN) for her card. NBS declined to refund the losses and Mrs H complained. NBS wrote to Mrs H, advising her that they wouldn’t be refunding the losses. In their final response, NBS said:

- Security details should never be divulged to anyone else and its unclear how V obtained the various details necessary to access the account.
- A payee in V’s name had already been set up, which explains why no transfers were flagged.
- Mrs H was encouraged to seek legal advice in respect of any action to recoup the funds or whether Mrs H began criminal proceedings.

Mrs H was left unhappy with NBS’s decision and brought her complaint to the Financial Ombudsman Service for an independent review.

An investigator was assigned to look into the matter and asked both parties for information about what had happened.

Mrs H, who’s represented here by a family member (Mr X) was able to say that:

- Mrs H didn’t check her account as she lived within her means and knew she had substantial savings.
- She was financially illiterate and not used to dealing with family finances.
- Both Mrs H and V are considered vulnerable.
- V later admitted to taking the money.
- Mrs H reported the matter to the police but didn’t follow through with any further legal

action to protect V's mental health.

- Mrs H confirmed she hadn't given any form of permission for V to use her account.
- Mrs H considered all the payments made by V to be unauthorised.
- Mrs H confirmed she didn't keep any written reminders about her account details, and she used normal security precautions to protect her account.
- Throughout 2023 Mrs H wasn't receiving statements.
- Mrs H was "*often unable to access her banking app*" and dismissed this due to her lack of technical knowledge.

NBS provided some details about payments made from the account and limited information about the payment devices used to make the payments. In summary this showed that:

- A new device was added to Mrs H's account on 24 January 2023.
- A text message was sent at the time to Mrs H's phone advising this. A reply was made (presumably by Mrs H on 17 October 2023) saying "this was not me".
- Multiple payments were made from the account using both Apple Pay (set up the same day as the new device) and bank transfers to V's NBS account.
- Initial payments and transfers were for relatively small amounts. This changed in July 2023 when much larger transfers were made, including a £13,100 payment and a £14,200 payment (£7,300 was later returned).
- What appears to be the second device (added 24 January) was used to make payments and transfers.
- NBS doesn't have a detailed list of Apple Pay transactions.
- They dispute having to refund the losses.

After reviewing the complaint, the investigator concluded that NBS should refund the full amount taken by V without Mrs H's permission. He didn't think that the evidence showed Mrs H was responsible for them, nor did he think that she'd been sufficiently negligent to warrant a different outcome.

NBS disagreed with the investigator's outcome and responded, saying that in their view, the efforts made by V to conceal her actions means that NBS are unable to offer a refund, and they believe this should be dealt with as a civil matter.

As part of my own investigation, I made further enquiries of both NBS and Mrs H via her rep.

NBS were unable to provide detailed data about disputed Apple Pay transactions due to the time that has elapsed.

Mrs H answered my questions which in summary was that:

- When she was unable to access online banking, she assumed it was a technical issue.
- She was confused by the NBS text message, but at the time didn't have any reason to believe her accounts had been compromised.
- She believes NBS should've done more to protect her account given the payments being made from it.

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 now done so, I'm upholding this complaint and I'll explain why.

I'd also like to recognise the very difficult circumstances Mrs H found herself in here and the wider issues she and her family have been dealing with.

The relevant regulations here are the Payment Service Regulations 2017 which detail the liability for transactions that take place on a consumer's account. NBS can normally hold Mrs H liable for transactions on her account if the evidence suggests it's more likely than not that she made the transactions, or if she authorised someone else to make them, or if she failed to keep her account safe - either by displaying a very high degree of carelessness (gross negligence) or by intentionally failing to keep security details safe (failed with intent).

It's apparent here that NBS now accept that these transactions weren't carried out by Mrs H. I agree with this reading of the evidence, so I'm satisfied that those transactions disputed by Mrs H weren't authorised by her. I'll now need to assess whether Mrs H failed to keep her account safe.

NBS are effectively arguing here that Mrs H was sufficiently negligent with how she protected her account that led to the unauthorised use of it (likely by) V. This comes under the test of "gross negligence" which has a high bar for NBS to meet.

The investigator detailed the specifics in his review of the complaint, so I won't repeat them here. I'll refer to those aspects of the situation that I think are relevant.

Mrs H is required to keep her account details safe. She's explained how she kept her security details secure, some of which were on her phone which was protected by a security number. At the time of the complaint, V was living with Mrs H and had regular access to her phone simply because she was in the same house. It's reasonable to conclude here that V obtained the necessary details to log in to Mrs H's phone and gather the required information about the NBS account. This enabled the registration of a new device which was then able to access Mrs H's account independently.

Once that was done, the addition of a new Apple Pay token was a relatively simple matter, together with independent access to the mobile app. This enabled the likely user (V) to access the account whenever they wished and make payments to their own account. Mrs H had previously set up V as an authorised payee (for smaller payments), so there was no further need to add additional accounts. It appears here that V just transferred money from Mrs H's account to her own one at NBS whenever she wanted funds.

I do understand how it would've been difficult for NBS to spot any unauthorised payments taking place given the fact the payee was already set up. They would have had little reason to be suspicious, certainly in the beginning when the unauthorised payments were for relatively small sums. Although I'd note here that there were some larger payments made – one for £13,100 and one for £14,200 which do seem rather large when compared to other payments. In fact, one of the NBS operators thought that this should've been raised at the time because it was suspicious. I don't think it makes any material difference to the outcome here, but NBS may wish to review how they approach this type of payment.

So, I don't think there's a case here that Mrs H was grossly negligent, that's because she had reasonable arrangements to keep her security details safe and didn't leave them written

down/easily available for anyone else to use. The co-living arrangements with V were sufficient here for V to gather the requisite details (pins and passwords etc) including access to Mrs H's phone. It seems that V was determined to access the account and given Mrs H's belief that she had sufficient funds to live, it's not surprising the account was breached and went unnoticed for so long.

I also don't think there's a case to show Mrs H's arrangement were such that she "failed with intent". In order to evidence this, NBS would have to show that Mrs H deliberately acted in a way that allowed V to use the account. I haven't seen any evidence that would support this point. I have thought about the text message received on Mrs H's phone at the time of the new device being registered but given her lack of belief her account was at risk, I don't think there's sufficient here to conclude that Mrs H should be responsible for the losses incurred on her account.

Overall here, Mrs H has consistently denied giving access to her account to V and that appears to have been accepted by NBS. I don't think there's evidence to conclude that Mrs H was grossly negligent with her account details or phone and she hadn't set out to deliberately enable V to gain access to her account, so again there's insufficient evidence to conclude she intended for this to happen.

I've also thought about the NBS position regarding the police or civil approaches to the loss of the funds. I'd say here that there's no obligation for Mrs H to either pursue the matter with the police or take other civil action in respect of the lost funds. Family based issues such as this are no doubt difficult for all parties to deal with and I understand NBS will feel that it's unfair to have to repay the funds lost from the account in this way. But, the PSRs are clear here – Mrs H didn't authorise the payments and wasn't grossly negligent, or acted with intent or was fraudulently involved, so NBS are responsible for repaying the funds taken from the account.

I do want to make it clear here that whilst I've been able to make some reasonable assumptions about how Mrs H's account was used by another person (likely V), I'm not making any determination about that user (who is not joined in this complaint). That's because it's not relevant to identify them specifically in order to reach a conclusion about whether Mrs H should be responsible for the losses. Simply that there's insufficient evidence to show Mrs H should be held responsible for the payments taken from her account.

Putting things right

NBS will be required to refund the disputed transactions from both the faster payments and the use of Apple Pay registered on the second device. They'll also be required to add interest at 8% simple per annum for the loss of use of the funds.

My final decision

My final decision is that I uphold this complaint against Nationwide Building Society and in order to settle it, they're now required to:

- Refund those transactions disputed by Mrs H, including both the faster payments and Apple Pay transactions.
- Pay simple interest at 8% per annum from the date of loss to the date of repayment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or

reject my decision before 2 February 2026.

David Perry
Ombudsman