

## **The complaint**

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

## **What happened**

In 2024 after being seriously ill and spending some time in a care home, Mr W noticed his Nationwide account had been practically emptied. He'd not had access to his phone during the period he'd been cared for and complained to Nationwide he'd been a victim of fraud.

There were two specific periods where Mr W noted disputed card transactions – nearly £2,500 from March 2024 in between genuine transactions and then over £12,000 from March to June 2024.

Nationwide believed they'd carried out suitable authentication checks at the time of the transactions and wouldn't refund Mr W.

Mr W – with the assistance of a representative – brought his complaint to the ombudsman service.

Our investigator believed there was sufficient evidence to show it was unlikely Mr W had made the disputed transactions. He asked Nationwide to refund him.

Nationwide wouldn't agree to this resolution. They felt Mr W could have been acting negligently by enabling a third party to access his debit card and phone.

Mr W'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 W'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 W has acted with gross negligence.

To help me come to a decision, I've reviewed the evidence Nationwide provided as well as Mr W's testimony. I've also seen medical evidence confirming Mr W's emergency admittance to hospital in April 2024 for a week whilst he was being treated for a stroke. Mr W's representative has confirmed he then spent six weeks in a care home whilst he recovered.

As Nationwide already knows, I will be upholding this complaint. I'm satisfied there is not sufficient evidence to show Mr W authorised these transactions. I say this because:

- The first tranche of disputed transactions were mostly gambling transactions and both food delivery and travel app transactions. At least one of the gambling transactions was authenticated by the use of a one-time passcode. What is known about Mr W is that he is a vulnerable adult and has at least one close relative who occasionally assists him. I can see there being numerous potential points of compromise for a close third party to access Mr W's debit card and phone.
- Nationwide suggest this doesn't match normal fraudulent spend but actually I would disagree particularly when we are considering a known third party committing this fraud.
- There is also a clear point of compromise when Mr W was admitted to hospital as an emergency and unsurprisingly left his debit card and phone behind in April. Nationwide has suggested there could be gross negligence, but I think as Mr W was admitted to hospital as an emergency, they are incorrect. The test for gross negligence is – as they know – a high bar and I don't believe it's been met here.
- For example, Mr W's card is used for travel within two hours of him being admitted to hospital. As Mr W was seriously ill, I can't see this transaction being carried out by him or with his authority.
- The largest volume and value of the transactions that are then made without authorisation are payments to the known third party's own account with another bank. I note that at least one of those was authenticated by a one-time passcode. Nationwide's technical evidence indicates this was done using Mr W's phone but as his phone was not in his possession, I think it's more than likely this was completed by the third party.
- Nationwide has confirmed Mr W's Nationwide bank app was not used for any of these transactions which does suggest that the third party was unable to access Mr W's banking app.
- I'd have to wonder why suddenly Mr W would be making nearly £12,000 worth of payments to this third party – particularly spread out over such a period.
- Other disputed transactions resemble those that were made in March 2024.

Taking into account the transactions were made, I think it's more than likely there were made by a third party. I've seen no evidence to show Mr W authorised these.

In correspondence with Nationwide before I completed this final decision, I raised the issue that these disputed transactions did not seem to alert Nationwide that something unusual was going on. There were more than 300 disputed transactions altogether. Mr W – as

Nationwide noted – held a considerable amount in his Nationwide accounts but over a period, one of his accounts was to all intents and purposes emptied. I do wonder why what happened here didn't ring sufficient alarm bells.

### **Putting things right**

As I've confirmed I believe Mr W didn't make or authorise these disputed transactions, Nationwide will need to refund £15,772.38, along with 8% simple interest from the date of the transactions.

### **My final decision**

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

- Refund Mr W for the disputed transactions; and
- Add 8% simple interest from the date of the disputed transactions to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 May 2025.

Sandra Quinn  
**Ombudsman**