

The complaint

Mrs T is unhappy that Nationwide Building Society has declined to refund transactions from her account that she says she didn't authorise.

What happened

Mrs T previously raised a complaint with Nationwide in relation to Automated Teller Machine (ATM) withdrawals that she says she didn't make. This complaint has been addressed by both Nationwide and our Service separately. But, during the course of that complaint, Mrs T raised further transactions that she says she didn't make. So those separate transactions are now the focus of this new complaint.

These are three debit card transactions made in December 2023, March and April 2024 totalling £160.08. Nationwide said its fraud team would consider the disputed transactions and respond accordingly, but to date, no outcome has been provided to Mrs T from Nationwide.

Mrs T therefore referred her complaint to our service where it was considered by one of our investigators. She was satisfied that Mrs T's genuine card and Personal Identification Number (PIN) had been used for two of the transactions, and believed that Mrs T had most likely authorised them. So Nationwide didn't need to refund those. But, she believed Nationwide should refund the third transaction along with 8% interest, as it was a 'card not present' transaction and she didn't believe that Nationwide has sufficiently shown that it was authorised by Mrs T.

Mrs T accepted our investigators findings.

But Nationwide disagreed and provided further evidence which it says shows Mrs T most likely authorised the card not present transaction. But this didn't change our investigators mind. So the complaint has been passed to me to decide.

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.

The relevant regulations here are the Payment Services Regulations 2017. 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. So what I have to decide here is whether it's more likely than not that Mrs T, or someone else, authorised the disputed debit card transactions.

Chip and PIN transactions

From the evidence I've seen from Nationwide's electronic records, I'm satisfied that two of the disputed transactions, (the first for £50.58 and the second for £9.50), were carried out using Mrs T's genuine card and PIN. I say this because I'm satisfied that the chip on Mrs T's card was read when each transaction was processed, and the corresponding PIN was entered. Mrs T has said her card has always been in her possession, no one else has access to it, and no one else knows her PIN. Mrs T has suggested that her card may have been 'cloned.' But it's not generally thought possible to copy the chip on the card, and our service hasn't come across any cases where we felt this was a likely explanation of what happened. I haven't seen any persuasive evidence this is what happened in this case. So, I'm satisfied that these transactions were made using Mrs T's genuine card and PIN.

When I consider what we know overall about the way Mrs T operates her account, her communications with our investigator, and the circumstances of all transactions she's disputed on her Nationwide account, it's possible that someone known to Mrs T could've made these transactions without her knowledge. In doing so, they would need to have taken Mrs T's card from her possession, use it with her PIN, and then return it to her all without her noticing. Mrs T is adamant that no one she knows could've done such a thing. I've carefully considered this possibility, and I cannot rule it out as the most likely explanation here. However, taking into account Mrs T's testimony, I can't fairly ask Nationwide to refund these two transactions to her.

Card not present transaction

The third transaction disputed by Mrs T, for £100, was processed as a 'distance contract.'

Mrs T says she didn't make this transaction and didn't allow anyone else to use her card details to make it either. As above, despite what Mrs T has said about the circumstances surrounding her card, I can't rule out the possibility of someone known to Mrs T making the transaction without her knowledge.

'Card not present transactions' are different to those carried out using chip and PIN. The card *details* are used to process the transaction, rather than the physical payment instrument. And, whilst Nationwide has provided evidence to show the genuine card and PIN were used to authenticate the first two transactions, it needs to show us that Mrs T most likely authorised the 'card not present transaction' too.

Nationwide, in response to our investigator's findings, told us that a 'One time passcode' was sent to Mrs T's registered contact information before the £100 transaction was approved. This code, intended for Mrs T, was an extra level of security for Nationwide to be satisfied that it was Mrs T herself authorising the £100 transaction.

But I can't see that Nationwide has provided evidence of such code being sent to Mrs T's contact information. And, as our investigator has pointed out, its own notes suggest that some contact information it holds for Mrs T belongs to a family member of hers, in the form of a mobile telephone number. So, without evidence that satisfies me that Mrs T herself authorised the disputed £100 transaction, rather than this family member or someone with access to their phone, Nationwide can't fairly hold Mrs T liable for it. This is also the case

because Nationwide's account terms say it will refund any online/phone transactions the customer didn't make, which is in line with the PSRs' stance on distance contracts.

Putting things right

Whilst I find that Nationwide is entitled to hold Mrs T liable for the two chip and PIN transactions, I'm not satisfied that it's demonstrated that it's entitled to hold her liable for the card not present transaction. So, Nationwide should:

- Refund the disputed transaction of £100 to Mrs T.
- Apply 8% simple interest per annum to this amount, from the date of the transaction to the date of settlement*.

*If Nationwide considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs T how much it's taken off. It should also give Mrs T a tax deduction certificate if she asks/ask for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 10 April 2025.

Lorna Wall
Ombudsman