DRN-5707929

The complaint

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

What happened

In November 2024 on a night out, Mr M had his phone stolen. He'd been using it at the time.

There were numerous transactions made using Mr M's different banking apps including Nationwide. There were payments made from Mr M's other bank account (with a bank I'll call H) into his Nationwide account. Then £3,460 worth of transactions were made from Mr M's Nationwide account.

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

Mr M brought his complaint to the ombudsman service. He also brought a complaint about H to our service. H agreed to refund the disputed transactions except those payments that went to Mr M's Nationwide account. Mr M had also received a refund of £4,000 from his credit card provider as soon as he'd reported his card details had been used without authorisation.

Our investigator believed there was sufficient evidence to show Mr M had been the victim of fraud after having his phone stolen. He highlighted that the IP address evidence that Nationwide relied upon wasn't as clear as they stated. He asked Nationwide to refund £3,460 to Mr M.

Nationwide wouldn't agree to this resolution. They remained concerned that Mr M had delayed informing them of any fraud. They didn't accept the transactions were fraudulent.

Mr M'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 M'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 M 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 M's testimony. I've also seen the evidence that Mr M provided to our investigators on another complaint which demonstrates Mr M getting a replacement SIM card.

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

- Mr M was out after a pre-Christmas event 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.

- It's well-known for phones to be stolen whilst they are in use. This enables fraudsters to use a phone and potentially access codes which may be stored in password-protected notes and then banking apps.

- Mr M has told us he was in the midst of using his phone, and therefore his phone was open, when his phone was stolen. I can see there being a clear point of compromise for a third party to access Mr M's phone. In this case Mr M's Nationwide card details were accessed as these had been added as a token within an app. This is standard for many customers to hold their cards within an apple wallet or similar.

- Nationwide has confirmed they believe the IP address for the disputed transactions resemble one that Mr M had used previously. Our investigator demonstrated how that specific IP address may cover a wide domain and be related to Mr M's mobile phone service provider. I don't find this convincing evidence on its own.

- On the other hand, Mr M's testimony has remained consistent throughout the complaints he's brought to our service. I also can't ignore the other instances of fraud that took place and have been subsequently refunded on the basis they were unauthorised.

- Nationwide hasn't explicitly suggested there could be gross negligence, but there's been an underlying suggestion that they may believe this. The test for gross negligence is – as they know – a high bar and I don't believe it's been met here. I've seen nothing which definitively shows Mr M stored access information to his banking apps without further protection.

- I've considered whether Mr M 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 M's testimony which is backed up by other evidence. This includes the statements our service has seen from Mr M's external crypto account.

- I appreciate Nationwide believes Mr M wasn't as prompt as they expected in informing them what had happened. I'm not convinced that 48 hours after the theft could be seen as much of a delay.

- It seems clear to me that Nationwide refused Mr M's claim on the basis that they couldn't see any compromise. I also can't pinpoint exactly how a fraudster committed the fraud, 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 access what they needed from Mr M's phone.

I will be asking Nationwide to refund Mr M.

Putting things right

Mr M lost £3,460 from his Nationwide account as the result of fraud. Nationwide will need to reimburse him. They will need to add 8% simple interest from 24 November 2024, the date of the disputed transactions.

My final decision

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

- Refund Mr M for the disputed transactions, amounting to £3,460; and

- Add 8% simple interest from 24 November 2024 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 September 2025.

Sandra Quinn
Ombudsman