

The complaint

Mrs B complains Bank of London and The Middle East plc trading as Nomo Bank (“Nomo”) won’t refund transactions debited from her account which she says she did not make or authorise.

What happened

Mrs B contacted Nomo in May 2024 to dispute eight payments from her account totalling £28,844.31 on 3 May 2024. The payments were all made to the same merchant.

Payment	Date and Time	Amount
1	3 May 2024 – 3.15pm	£801.19
2	3 May 2024 – 3.15pm	£4,009.14
3	3 May 2024 – 3.15pm	£4,008.34
4	3 May 2024 – 3.16pm	£4,006.73
5	3 May 2024 – 3.17pm	£4,005.93
6	3 May 2024 – 3.17pm	£4,005.13
7	3 May 2024 – 3.17pm	£4,004.33
8	3 May 2024 – 3.19pm	£4,003.52

Nomo Bank looked into the transactions. It said they’d been made using Mrs B’s card details via Apple Pay. It said ApplePay could only have been set up with a One Time Passcode (“OTP”) or an in-app approval. Nomo didn’t think the transactions were unauthorised but it agreed to refund £20,024.64 because the account daily limit should have stopped some of the transactions from debiting the account.

Mrs B referred her complaint to our service as she wanted the remaining £8,818.58 refunded.

An Investigator considered the complaint. He said, in summary, he thought what Nomo had already offered to do was fair because he said the evidence showed ApplePay had been set up with Mrs B’s card details and an OTP which had been sent to her registered device. Since she’d told us her phone had been in her possession, the Investigator couldn’t see how this could have happened without Mrs B’s involvement.

Mrs B didn’t agree. She maintained she hadn’t received, and could not therefore, have shared an OTP.

As Mrs B didn’t agree, the complaint was passed to me to decide.

I issued a provisional decision. I’ve set out my findings again below and they form part of this decision.

Provisional findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Under the Payment Services Regulations 2017 (“PSRs”), generally, Nomo can only hold Mrs B responsible for transactions she made or authorised. Or where the transactions took place because Mrs B failed with intent or gross negligence to keep her security credentials safe.

Nomo has provided evidence that the disputed transactions were all made using ApplePay. The transactions were made abroad. Mrs B has provided evidence she was in the UK at the time, so I’m satisfied Mrs B didn’t make the transactions herself.

She says, at the time of the disputed transactions, she didn’t have a physical debit card for this account. And I can see she had emailed Nomo on 19 April 2024, enquiring about the whereabouts of her card as she’d been waiting for it to arrive for about a month by that point. Nomo responded to say Mrs B should order a new card. Mrs B says she did order a new card, but Nomo’s records don’t appear to show this.

Nomo have provided the card history for Mrs B’s account and based on this, only two cards were issued to Mrs B. One in September 2023 and one in February 2024. Mrs B has told us she never received a card at all for this account. According to Nomo’s records, it was the second card issued that was added to the ApplePay wallet and used to make the disputed transactions. This is the same card that Mrs B says she had already added to her own wallet on ApplePay. Mrs B has told us she added the Nomo card to her own ApplePay wallet at the end of April 2024, but she can’t be specific about the date as her app no longer shows this information.

Nomo has provided evidence to show that the transactions were made using ApplePay on a device that had been linked to Mrs B’s debit card information on 26 April 2024. Nomo has explained that to link the card details to a new device, the card details must be added to the device’s wallet app and then verified by entering an OTP, which is sent to the customer’s phone number held by Nomo.

I am satisfied that Nomo’s evidence shows an OTP was used to add the card details to the ApplePay wallet for the disputed use and that the OTP would have been sent to the registered phone number Nomo held for Mrs B. Mrs B is adamant she did not receive the OTP in question and therefore did not disclose it to anyone. But she does say she added the Nomo debit card to her own ApplePay wallet at the end of April, and Nomo’s records show it was added to the wallet from which the disputed transactions were made on 26 April 2024. Nomo’s records show there was only one successful attempt to add the debit card to a wallet, though there were previous unsuccessful attempts.

Given that the only successful attempt to add the card to a wallet was the one that was then used to make the disputed transactions and I’m satisfied that Mrs B – and her device – were in the UK at the time of the disputed transactions being made abroad, I don’t think it’s more likely than not that she authorised them.

Mrs B hasn’t given any explanation as to how someone else could have intercepted the OTP. I’ve not seen anything to suggest there was malware on Mrs B’s phone. So I think it’s most likely Mrs B did disclose the OTP in some way, because unless she did so, the transactions couldn’t have taken place. I think more likely than not Mrs B disclosed the OTP inadvertently – perhaps because she was being tricked or had clicked on something during her own attempt to add the card to her device.

Nomo has said by sharing the OTP Mrs B has authorised the third party to use her card and has therefore authorised the disputed transactions. But the act of sharing the code doesn’t mean she went on to authorise the transactions that took place a week later. So, I don’t find the transactions were authorised by Mrs B.

I've considered whether there's any other basis on which Mrs B could be held liable for the transactions. So, whether she breached her obligations to keep her security credentials safe or whether she's acted with gross negligence. To find Mrs B had been grossly negligent, I'd need to be satisfied she'd acted with a lack of care significantly beyond what we'd expect from a reasonable person – having displayed a serious disregard to an obvious risk.

In this case, I've seen no persuasive evidence Mrs B has failed with intent or gross negligence to keep her security credentials safe which has led to the disputed transactions taking place. This means I don't find any basis on which Nomo is entitled to hold Mrs B liable for the transactions.

I also note that the transactions in dispute were eight, mostly high-value, international payments that were all completed within a four-minute period. Nomo has already refunded the bulk of the disputed funds on the basis that those payments exceeded the account's daily limits. Given the size and destination of payment 2 as set out above, I would've expected Nomo to have intervened. Had Nomo done so, the fraudulent nature of the transactions would have been discovered and could have prevented Mrs B's loss.

So I am currently minded to require Nomo to refund the outstanding value of the disputed transactions and pay 8% simple interest on this amount, from the date the transactions were made until the date of settlement.

Responses to my provisional decision

Mrs B didn't respond by the deadline we set.

Nomo responded to say it didn't agree. I've summarised its reasons as follows:

- By disclosing the OTP, Mrs B has either authorised the disputed transactions or failed with intent and/or gross negligence to keep her security credentials safe.
- Nomo referred to another Ombudsman's decision on a different case where the Ombudsman had concluded sharing the OTP was grossly negligent.
- Because ApplePay payments are tokenised, this means they're more difficult to detect and prevent.

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.

Nomo's position is that by disclosing the OTP, as I found Mrs B must have done in my provisional findings, she has either authorised the transactions or she's failed with intent or gross negligence to keep her security credential safe – as required by the PSRs.

I explained in my provisional decision that I didn't agree with Nomo's point that the act of sharing the code itself meant the transactions were authorised. Since Nomo has provided nothing new in this respect, I remain satisfied the transactions were not authorised by Mrs B.

I also explained in my provisional decision that I think the OTP was likely disclosed during one of Mrs B's attempts to add the card to her own ApplePay wallet, given that the evidence shows this was attempted but the only time it was successfully done was when it was added to the third party's wallet. And, although Mrs B hasn't given any explanation on this point, I thought it was likely that she'd done so inadvertently rather than deliberately.

Nomo's referred to another Ombudsman's decision on another case involving OTPs and ApplePay. The circumstances of that complaint are different to Mrs B's. In Mrs B's case, she's been unable to provide any explanation as to how the OTP could have been intercepted and there's evidence of her own attempts to add the card to an ApplePay wallet. Nor is there any evidence of how the card details came to be in someone else's possession either. So in the absence of any evidence of what happened specifically in relation to the card details and the OTP, while I accept that *something* must have happened, I haven't seen anything to suggest she has failed with intent or gross negligence to keep her security credentials safe.

I have noted Nomo's point that the OTP text message sent to Mrs B said "Nomo will never ask you to reveal this code". But there's no evidence to suggest that Mrs B thought she was talking to Nomo or revealing the code to anyone from Nomo. So I don't think this changes things.

Finally, Nomo has said that tokenised payments – like ApplePay payments – are more difficult to detect and stop. Nevertheless, I remain satisfied that payment 2 ought to have prompted an intervention from Nomo, given it was a high-value international payment. And had Nomo intervened, Mrs B's loss could have been prevented at that point.

Overall, I remain satisfied Mrs B didn't authorise the payments she's disputing, nor do I think there's any other basis on which she can fairly be held liable for them. So I find Nomo need to refund them.

My final decision

For the reasons I've explained, I uphold this complaint.

To put things right, I require Bank of London and The Middle East plc trading as Nomo Bank to:

- Refund Mrs B the outstanding amount of the disputed transactions, £8,818.58.
- Nomo should pay 8% per year simple interest on the refund amount from the date it debited the account until the date of settlement. If Nomo considers it's obliged to remove tax from this interest, it should tell Mrs B how much it has taken off. Nomo should give Mrs B a certificate showing how much tax is taken off, if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 27 October 2025.

Eleanor Rippengale
Ombudsman