

The complaint

Miss R is unhappy that Nationwide Building Society will not refund the money she lost as the result of an authorised push payment (APP) scam.

What happened

In summary, on 19 September 2022, Miss R received a call advising that her Nationwide account had been compromised. This followed a similar call purportedly from her charge card provider. The caller, who was using a spoofed Nationwide number, advised she should move her money to a safe account – in this instance via an account she held with another bank (bank 2) and then onto what she believed to be a new, safe Nationwide account. It was in fact a scammer's account held elsewhere.

Miss R made five transfers online to her account at bank 2 totalling £40,400 and ranging in value from £7,000 to £9,000. She wants the first two payments she made totalling £16,000 refunding. The last two payments were able to be stopped by Nationwide as Miss R's sister, who was a victim of the same fraud, had by then received a call from her bank warning her that this was a scam. The third payment had been funded by Miss R's sister and Miss R was able to return those funds to her sister from her account at bank 2.

Nationwide rejected Miss R's refund claim saying she had moved the money to an account in her own name at bank 2 that she had used before, and so it is not liable for her loss. It said Miss R had done nothing to check what she was being told by the caller. It paid Miss R £250 compensation to apologise for incorrectly telling her she would receive a 50% refund prior this being approved internally.

Our investigator upheld Miss R's complaint. He said Nationwide ought to have intervened as the payments were out of character for Miss R's account. He believed this would have broken the scam of the spell. He concluded Nationwide must refund £16,000, plus 8% simple interest.

Nationwide disagreed with this assessment and asked for an ombudsman's review. It said, in summary, we had not given a view on the actions of bank 2 and these ought to be considered. If Nationwide ought to have intervened surely the same finding should apply to bank 2. It went on to set out the many issues that it believes focusing solely on Nationwide's actions creates, and commented on the problems it sees in the approach it perceives we have taken. I will not set them out in full here as they are not specific to the merits of this case. More critically, they do not take into account that our investigator previously confirmed to Nationwide that he had looked at the actions of bank 2, and indeed shared the outcome of that investigation.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision.

Extract from my provisional decision

There's no dispute that Miss R made and authorised the payments. Miss R knew why she

was making the payments. At the stage she was making these payments, she believed she was transferring money out of her account as it had been compromised. I don't dispute Miss R was scammed and she wasn't making the payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Nationwide has an obligation to follow Miss R's instructions. So in the first instance Miss R is presumed liable for her loss. But there are other factors that must be taken into account.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payments were not made to an account held by another person the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that Nationwide should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.*

In this case I think Nationwide ought to be held liable in part for the transactions. I'll explain why.

I think the payments were very clearly out of character for Miss R's account and ought to have triggered an intervention from Nationwide from the outset. Payment one was for £9,000 which was significantly higher than any other payment Miss R had made in the previous 10 months (Nationwide submitted transactions from 1 November 2021). Her account usage typically had a very stable pattern with all debit transactions under say £500 except for two higher monthly payments to other financial firms. She had made no previous faster payments to her account at bank 2. I note Nationwide's own fraud notes assert the payments were outside of normal behaviour.

So what I need to decide, based on the available evidence, is what would most likely have happened, had Nationwide intervened effectively. I am persuaded that a call from Nationwide at the start of the scam would have changed the outcome. At the time Miss R understood she was speaking to Nationwide and the scammer had successfully spoofed a Nationwide number so it was reasonable for Miss R to be confident the call was genuine.

So had Nationwide held the first transaction until it had spoken to Miss R and asked her questions and for more of the basic surrounding context, I have no reason to doubt that Miss R would have explained she was being directed by who she thought was Nationwide to move funds to a safe account. So I think Nationwide would have realised this was a scam, explained what was happening to Miss R and so broken the spell.

I do not think the scammer would have been able to successfully coach Miss R to the extent that she then did not believe Nationwide when it confirmed her account had not been

compromised.

Should Miss R bear some responsibility for the overall loss?

I've also considered whether Miss R should also bear some responsibility for her overall losses. To make my decision I've thought carefully about the nature of the scam and the impact I think this reasonably had on Miss R when she was acting 'in the moment'. I don't think it was unreasonable for Miss R to have trusted that the call she received about her account being compromised was genuinely from Nationwide given that the number had been spoofed and so appeared to come from Nationwide. So, I can understand why Miss R would be concerned and fell victim to the pressure of acting quickly.

But as the scam unfolded I find bank 2 intervened as it should have. It explicitly flagged to Miss R that the account name wasn't a match and that she may be the victim of a scam, giving the specific traits of a safe account scam - things that she was in fact experiencing at that time – yet Miss R went ahead.

I have thought carefully about what it is realistic to have expected Miss R to then do when she was transferring the money given the pressure she would have been under in the moment of a call like this. But as she had received two clear warnings from bank 2 I think Miss R ought to have reflected such that she should have called Nationwide to check whether her account was secure, or not, before progressing. I have seen no evidence she took any steps to verify the caller's identity.

I therefore do feel it is appropriate to reduce the amount of redress Nationwide has to pay to Miss R by 50%.

Finally, as Miss R had sole control of the other account at bank 2, I would not have expected Nationwide to do anything more to try to recover the money.

It follows I am instructing Nationwide to refund half of the money to Miss R.

This is a difficult decision to make, I'm sorry Miss R has lost a considerable amount of money and suffered such distress. I can understand why she would like to be compensated in full for her losses. I do accept Miss R has fallen victim to a sophisticated scam. But I can only consider whether Nationwide, which had no involvement in the scam itself, can be fairly held wholly responsible for what happened. For the reasons set out above I find Nationwide should be held liable for 50% of Miss R's losses in the circumstances of this case

I find that Nationwide's payment of £250 for the error it made in communicating an unapproved outcome prematurely, and the upset this caused Miss R, to be fair.

I then set out what Nationwide would have to do to put things right.

Both parties responded to the provisional decision.

Miss R said whilst she wasn't happy with this conclusion, she would accept it to allow her to move on.

Nationwide disagreed with the provisional outcome. It said, in summary, it was at odds with the approach of this service in similar cases and there is no explanation why. This approach risks the chance of over-refunding the victims of scams. It maintains that Miss R did not suffer any loss when the payments were transferred from her Nationwide account to the account held in her name at bank 2. It asked why I think an intervention from Nationwide would have been successful when we know Miss R disregarded the warnings from bank 2.

It said that the loss in a scam involving a payment journey cannot fairly sit with the payment service provider (PSP) at the start of the journey, rather if the final PSP has met its obligations the liability must rest with the account holder- so in this case that means Miss R was the cause of her loss.

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.

Miss R did not send in any new information so I will focus here on Nationwide's comments.

I have thought carefully about the points it raised but they do not change my findings or conclusion. I will explain why.

The similar cases it referenced have different attributes and as Nationwide knows we assess each complaint on its individual merits. In the circumstances of this case, which can be characterised as a continuous scam without a break in the chain of causation, I remain satisfied that the acts and omissions of Nationwide mean it should be held liable for the loss in part. I accept that Miss R had control of the account at bank 2 that the payments were made to. However, the transfers were made at the behest of the scammer and could have been prevented by Nationwide. Given the chronology of the payments in the journey of the scam I am satisfied it is reasonable to hold Nationwide partially liable for the Miss R's losses. There was no new, intervening act that prevents me from fairly making this conclusion.

Nationwide also disputes that had it intervened it would have broken the spell of the scam, arguing this cannot be my finding given Miss R disregarded the warnings from bank 2. I disagree with this comment however as it would have been a very different scenario.

As I said in the provisional decision, if Nationwide had held the first transaction until it had spoken to Miss R and asked her questions and for more of the basic surrounding context, I have no reason to doubt that Miss R would have explained she was being directed by who she thought was Nationwide to move funds to a safe account. So I think Nationwide would have realised this was a scam, explained what was happening to Miss R and so broken the spell. I do not think the scammer would have been able to successfully coach Miss R to the extent that she did not believe Nationwide when it confirmed her account had not been compromised.

Finally, Nationwide raised a concern about the possibility of 'double-recovery' in complaints such as these. I can confirm that is not the case here.

It follows I find Nationwide should be held liable for 50% of Miss R's losses.

Putting things right

Nationwide must now:

- refund 50% of Miss R's first and second payments (so 50% of £16,000)
- add interest at the rate of 8% from the date of the payments to the date of settlement*

*If Nationwide deducts tax from the interest element of this award, it should provide Miss R with the appropriate tax certificate so she can submit a claim to HMRC if applicable.

My final decision

I am upholding Miss R's complaint in part. Nationwide Building Society must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 2 August 2023.

Rebecca Connelley
Ombudsman