

The complaint

Mr R complains that Nationwide Building Society were unreasonable in declining to refund transactions he says he didn't make. He'd like the transactions refunded.

What happened

In July 2022 Mr R contacted Nationwide to say there were transactions on his account he didn't recognise. These began on 9 May 2022 and ran through until 25 June. In total there were 20 transactions, totalling £1,299.24, all to the same online merchant.

Nationwide declined to refund the transactions. They said that the device used to make these payments had been used by Mr R before for undisputed payments. When Mr R spoke to Nationwide about this, he was unhappy with the service he received, feeling he was patronised. He was unhappy that he was told he'd failed security, despite answering the questions correctly, and that the decline letter didn't have a name on it.

Unhappy Mr R raised a complaint. Nationwide responded to say they were satisfied with the decision they reached in the fraud claim. They also didn't feel they'd been abusive on the phone calls they'd had with him. But they accepted they hadn't responded to the complaint in the timescale they'd set out, so they paid him £50 in compensation.

Mr R wasn't satisfied with this answer and referred his complaint to our service. He said he thought his phone may have had malware on it, which had led to the transactions. One of our investigators looked into what happened but didn't think Nationwide needed to do anything further. They felt the evidence suggested that Mr R had authorised the payments, as they came from a device that had made undisputed payments before. They didn't think Mr R had demonstrated there was malware on his phone. And they thought the service from Nationwide had been professional.

This wasn't accepted by Mr R, 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.

Disputed transactions

The relevant regulations regarding how payments are made from bank accounts are the Payments Services Regulations 2017. These say that generally a payment can only be taken from someone's account if they've authorised it. It's up to the payment service provider – in this case Nationwide – to show that a payment has been authorised correctly. And if they can't then they have no right to debit the account.

In this case the payments were all made using Mr R's card details to what appears to be a third party payment processor. Nationwide have confirmed they didn't contact the payment

processor to get details on what was being paid for, which may have been helpful. So, we can't be certain who the ultimate merchant was.

But the technical information from Nationwide shows me that each of the payments was authorised individually, rather than being set up as a recurring payment. The technical evidence is not as complete as I'd like to see. But from the evidence supplied the disputed transactions were made from the same device, as the device ID is the same. This device was also used to make a payment to a different firm for £14.49. I can see from the statements that Mr R has bought from this firm previously and hasn't disputed paying them.

The IP address the transactions were made from also remains consistent – and likewise has previously been used to make payments Mr R doesn't dispute. IP addresses aren't always consistent, and I note that this IP address is different from the one Mr R used to access his online banking. But since both the IP address and device ID are consistent with payments he has made before I think it's more likely than not the payments were made from his device.

Mr R hasn't mentioned allowing someone else to use his phone, or card details, to make payments. He has suggested there may have been malware on his device, allowing a third party to make the transactions. He said his phone was acting up at the time and looking like it was slowing down. He took the phone to be inspected, but he hasn't been able to provide us with any conclusive evidence that there was malware on his phone.

There's no allegation of Mr R being coached or coerced in to downloading any software, as oftentimes malware installation comes about as part of a scam. He isn't alleging he's been scammed, rather that there are transactions he knows nothing about. He said it had been through a factory reset, but this hadn't resolved the phone being slow. So, I don't conclude malware was the most likely issue he was having with his phone.

Having considered the nature of the transactions, it's unlikely to be malware. If a fraudster was sophisticated enough to put malware on Mr R's device without him knowing, I may expect them to attempt to use any available funds as quickly as possible. But in this case the transactions take place over approximately seven weeks. They are irregular, with days in between some transactions, and then several closer together. This doesn't suggest to me this is some unknown fraudster trying to steal as much as possible in a short period. This more looks like someone making use of the goods or services the merchant is providing.

The payments are generally for the same amount of £49.95, but there are some for £99.99 mixed in as well. No attempt is made to exhaust the funds in the account. This suggests to me whoever is making the transactions is aware of the account balance and making the payments deliberately. I can also see that Mr R was accessing his Nationwide online banking at the time and crediting the account to top up the balance. So, he should reasonably have noticed the decreasing balance if there was anything unexpected.

Overall, I'm not persuaded that the more likely explanation here is that some unknown third party accessed Mr R's device to make the transactions. In the absence of any evidence of the involvement from a third party, the most reasonable explanation I can see is that Mr R authorised the transactions. On that basis I don't see it's unreasonable for Nationwide to decline to refund them.

Customer service

Mr R has also complained about the service received from the Nationwide complaint handler. He's said he feels he was treated differently because of his name. But having listened to the calls, I'm not persuaded that they were handled unprofessionally or unreasonably.

In the first call Mr R doesn't answer some of the security questions generated by Nationwide's system correctly, so the handler couldn't proceed with the call. I've no doubt that this would have been frustrating for Mr R, but I don't see that the handler did anything wrong by this. All financial institutions are expected to have systems and processes in place to ensure they are sharing information with the correct people. In this case I'm satisfied that the handler was following the society's standard process.

I accept that Mr R was called on his own mobile number, but I wouldn't expect a call handler to depart from the society's security process on that basis. In this case, the handler did suggest alternatives such as Mr R calling back later, as the generated questions could be different.

In the second call Mr R is unhappy with the response to his complaint he's received. One of the major sources of contention is that the response letter doesn't have a name on it – although I will say the copy of this response letter I've seen contains the handler's name, albeit on a different page. I don't think it was unreasonable for the handler to ask Mr R if he can send a copy in. I don't find the handling of the call by Nationwide to be unprofessional or rude.

Overall, I'm not minded that the service Mr R received was unreasonable, or that he was treated differently than I'd expect. I'm satisfied he was treated fairly, in line with Nationwide's security procedures.

Nationwide have already accepted that they didn't respond to Mr R's complaint within their own timescales and paid him £50 in recognition of this. I'm satisfied this is appropriate, so I'm not asking them to do anything further.

My final decision

My final decision is that Nationwide Building Society do not need to do anything further to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 May 2024.

Thom Bennett
Ombudsman