

The complaint

Miss P complains that Nationwide Building Society (“Nationwide”) failed to prevent transactions from leaving an account she holds jointly with another person.

What happened

Miss P explained that she was in a relationship with a person who I’ll refer to as M.

M isn’t part of this complaint.

Miss P and M opened a joint account with Nationwide whilst they both also held individual accounts with Nationwide. Miss P later said M told her it was an account for the house and the children and she wasn’t aware it was a joint account (that gave M authority to use).

Miss P noticed several large transactions from the account that she didn’t make herself and raised this with Nationwide. She experienced a difficult conversation with one call handler who she says was rude and unhelpful. Miss P was told that as M was a joint account holder, he had authority to make transactions himself.

Miss P was unhappy with her treatment and that M had been allowed to make payments from the account without her knowledge. She made a complaint to Nationwide about the matter, also raising an issue with her online banking access.

Nationwide looked into Miss P’s complaint but didn’t change their position regarding the payment made by M. They did recognise that Miss P had experienced poor treatment on one of her calls and made a payment of £40 to her as compensation.

Miss P remained unhappy with the outcome and brought her complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our investigators who asked both parties for information about the complaint.

Miss P explained what had happened and was unhappy that she wasn’t informed or asked about the transfers made by M. She said that she was the victim of a romance scam, although she confirmed she’d lived with M and he was the father of her children. She described a difficult relationship with M and didn’t believe that he had authority to use the account.

Miss P said that she was persuaded to open the account by M and she had no idea it was a joint account. She added that M didn’t tell her it was jointly held and due to medical complications at the time, was unable to comprehend what was happening with the account.

Miss P said that she’d had ongoing problems logging into her account which Nationwide had failed to sort out. Miss P also remarked that she’d had difficulty closing the account.

Nationwide provided details of the account showing it was jointly held with M and they both had authority to use the account as they wished (meaning that each had the authority to use the funds in the account without the others permission). Technical data showed that Miss P had access to her account apart from on one day when it was blocked.

After reviewing the information, Miss P's complaint wasn't upheld, the investigator commented that:

- The payments were authorised by a joint account holder.
- The terms of the account allowed each account holder to utilise those funds.
- There was little risk for Nationwide to identify (about the disputed transactions) due to the circumstances of the account transfer (an internal account transfer) from an authorised user of the account.
- There was no evidence of a romance scam due to the personal circumstances of the joint account holders.
- The £40 payment for the service received by Miss P was fair.
- Miss P's online banking service was available apart from one day.

Miss P disagreed with the investigator's outcome and continued to argue that she should have been notified of the payments and they were fraudulent. Miss P described how the situation has caused her health to decline.

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.

I was sorry to hear that Miss P's health has declined throughout the difficult circumstances she's found herself dealing with. She's argued here that M, who was a joint account holder wasn't allowed to make transactions himself. Miss P believes that those transfers made by M are unauthorised.

I've had to take into account that the joint account holder (M) isn't part of this complaint, so to a degree, his views are unrepresented. Miss P has made certain comments surrounding the relationship which indicate it was, at times, difficult. She's essentially said she was duped into opening the account and didn't realise it was jointly held. She believed it was an account for house expenses and future costs for the children.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Nationwide can hold the account holders liable for the disputed payments if the evidence suggests that it's more likely than not that they made them or authorised them.

Nationwide can only refuse to refund unauthorised payments if it can prove M authorised the transactions, but Nationwide cannot say that the use of internet banking conclusively proves that the payments were authorised.

Unless Nationwide can show that consent has been given, it has no authority to make the payment or to debit the joint account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to the joint account holders. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold them responsible for the disputed transactions or not.

It's apparent from the audit information held by Nationwide that Miss P and M operated a

joint account together for a while. I don't think it's likely that Miss P was unaware of the joint holdings of the account as the statements are titled in both their names.

It's also clear that the transactions carried out by M were done using the appropriate payment information given to him by Nationwide after the account was opened. The specific conditions on this account were to provide authority to each person without needing the other to authorise any payments. That meant the joint account holders each had authority to use the account as they see fit.

As the payments were made by M, they're considered authorised for the purposes of this complaint. There was no requirement for Nationwide to contact Miss P about them before they carried out the instruction to transfer the funds to an account nominated by M. Even if Nationwide thought the payments were unusual, they would have likely asked M about them himself, rather than Miss P because he was the authorised user making the payments.

I understand Miss P has said the relationship was, at times, difficult. Whilst I accept her comments here, I don't think the operation of the account, or the information held by Nationwide at the time, could have given them cause to intervene.

I realise this will be difficult for Miss P to accept, but in respect of the transfers made from the joint account, Nationwide were following an instruction from a legitimate account holder and as such, the payments were authorised.

What that means for Miss P's substantive complaint is that I won't be upholding it. I've also considered the difficult call she experienced and Nationwide's response to that. I don't think there's any doubt that the way the call was handled led to Miss P feeling upset and stressed. Nationwide also concluded this and their payment of £40 to recognise the poor service was, I think, both a fair and reasonable response from them.

My final decision

My final decision here is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 22 December 2023.

David Perry
Ombudsman