

The complaint

Mr S says Nationwide Building Society unfairly refused to refund transactions he reported as fraudulent on his account.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In early February 2023 whilst Mr S was abroad in Thailand he noticed transactions which he didn't recognise. Mr S notified Nationwide of these transactions. There were ten transactions in total over a six-day period. The transactions were a mix of cash withdrawals and in shop purchases. Each transaction was authorised by chip and PIN.

Nationwide carried out an assessment of Mr S's claim and explained it would not be refunding the transactions as based on its review of the evidence they were made using Mr S's card and his PIN. Mr S raised a formal complaint, maintaining his position – the card was in his possession at the time of the transactions, and he didn't disclose his PIN to a third party. Nationwide reviewed Mr S's concerns but reiterated its stance. It explained it couldn't agree with Mr S's account of events, and it wouldn't be refunding the transactions,

Mr S was dissatisfied with Nationwide's response and referred his complaint to our service.

An Investigator reviewed Mr S's complaint and found that Nationwide had acted reasonably. They explained that based on the available evidence they thought it most likely Mr S authorised the transactions or authorised someone to make them on his behalf.

Unhappy with the Investigator's review, Mr S asked for his complaint to be reviewed by 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.

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 good industry practice at the relevant time.

Firstly, I am sorry to see Mr S has had cause for complaint. I don't underestimate the worry and anguish this situation has caused, and also the stress of dealing with the complaint about it. Having looked at the complaint fully, my review of the evidence has led me to the same overall conclusions as the Investigator previously set out and for much the same reasons. I will explain why.

Under the relevant regulations – the Payment Services Regulations 2017, Mr S is liable for transactions he has authorised – either by carrying them out himself or giving permission for

another party to carry them out on her behalf. The PSRs 2017 also set out that where a payment isn't authorised by the account holder, they may still be liable for it if they've failed with intent or gross negligence to adhere to the terms of their account or keep their personalised security credentials safe.

Nationwide has considered Mr S's testimony alongside the technical information it holds about Mr S's account and the transactions to reach the view that Mr S has authorised the transactions. I can't say with certainty how the transactions took place, but I must decide whether Nationwide concluding that Mr S most likely authorised the payments he is disputing, based on the information available to them, is fair.

Nationwide has provided its technical records which show all the transactions were made using chip and PIN. This means Mr S's physical card had to be present for each transaction and Mr S's PIN was also required. Throughout Mr S's complaint he has maintained that he was in possession of his card and his PIN has not been disclosed to anyone. This makes it difficult to establish a point of compromise for both the card and the PIN.

Mr S says the card could've been cloned as he made a payment on 31 January 2023 and the card was taken from his possession. However, it seems one of the disputed transactions occurred on the 30 January 2023, so before Mr S says the card was used for this payment. I must also explain that although Mr S maintains his card could've been cloned, the payments were all made using his chip and PIN. Although it's possible to clone the magnetic strip on a card and produce a replica, there's no evidence to suggest that's possible with the chip. So given that Nationwide has been able to show that the chip was read, I'm persuaded that these transactions were carried out with Mr S's genuine card.

I've also considered Mr S's comments about the nature of the transactions and the timings. Mr S says they were not in keeping with his normal spending, and the fact some transactions were declined shows this. Nationwide will have systems in place to detect unusual activity on accounts. In Mr S's case he had made cash withdrawals on the card in the past. I can also see some transactions were at a shop and this wouldn't necessarily raise any alerts for Nationwide as Mr S was visiting Thailand. So, I don't think the transactions would've raised suspicion with Nationwide.

The transactions were also spread out over a 6-day period, and I have to keep in mind this pattern doesn't match what is typically seen in cases of unauthorised use. Usually if a third party somehow obtains a card, they spend the available credit quickly to maximise their gain before the card is reported lost or stolen. The transactions in Mr S's case vary in value and appear to take place at very different times of day. I have to also bear in mind Mr S maintains the card was with him at all times, which means a third party would've had to take the card away and return it to Mr S repeatedly, without him noticing this. It seems implausible that an unknown third party would've taken these risks to carry out the transactions in this manner.

I have to also consider the fact Mr S had access to online banking on his device. The transactions would've appeared on his account, and Nationwide's online log in data shows Mr S accessed his account online during the period in question.

Overall, having considered everything, all of the available evidence points to it being more likely than not that Mr S provided authority for the transactions. I realise that this is not the outcome Mr S was hoping for, and he will be disappointed by the decision I've reached. As such, I cannot fairly and reasonably require Nationwide to take any further action in relation to this matter.

My final decision

For the reasons explained above, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 February 2024.

Chandni Green
Ombudsman