

## **The complaint**

Miss A has complained Nationwide Building Society won't refund money for a transaction she didn't make.

## **What happened**

Miss A complained to Nationwide that a transaction for £2,833 made on 4 May 2023 wasn't her. She blamed a member of her family, her sister, who she believed was able to use her phone whilst she was unavailable. Her sister helped her with her finances and knew her passcodes and PIN for her card. Her sister had used Miss A's account to make a transfer (to a business I'll call T) for some jewellery which was never received.

Nationwide initially treated this as a scam and contacted T who'd received the funds from Miss A's account. There were no funds remaining.

Nationwide told Miss A they weren't going to refund her as they believed she'd made the transaction herself. They could see that money from her savings account was transferred initially into her current account which allowed the payment to T to be made. Either fingerprint or face recognition was used to make the payment and they therefore believed Miss A had made the payment.

Miss A brought her complaint to the ombudsman service. Our investigator came to the same conclusion based on the evidence of the transactions made on 4 May 2023.

Still unhappy with this outcome, Miss A asked an ombudsman to consider her complaint.

I completed a provisional decision on 8 September 2023. I came to the same overall conclusion but considered different arguments in reaching it.

Nationwide accepted this but no response was received from Miss A.

I now have all I need to complete my final decision.

## **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.

Having done so, I've come to the same conclusion I reached in my provisional decision. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

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 to have been good industry practice at the relevant time.

The regulations which are relevant to Miss A's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Other factors do apply but nothing else specific in Miss A's case other than those factors I mention below.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what Nationwide and Miss A have told us. I have to say that both sets of evidence bear some inconsistencies which I'll try to unravel.

### ***Were the transactions authorised?***

The PSRs also say that someone acting as an agent on behalf of Miss A can be treated as acting with apparent authority when making transactions on their account.

Authority consists of two elements. The transactions must be authenticated, and Miss A needs to have consented to the payments being made.

I'm satisfied the payments were authenticated from the information provided to us by Nationwide. In other words, Miss A's genuine details logon details were used. The new payee was set up and properly authenticated.

Turning to consent, the evidence from Miss A suggests her sister used her phone to log on as Miss A, make the transfers and then the disputed payment itself. Miss A doesn't dispute providing her card details and letting her sister use her account. Her initial complaint to our service confirms her sister acted like a power of attorney on her account, although this wasn't yet official. Both Miss A and her aunt have provided testimony of Miss A's serious bad health and difficult memory issues which explains why she felt this was a necessary option.

I would suggest this means Miss A provided apparent authority to her sister to make the transactions. Whilst apparent authority can be withdrawn or annulled by the payment service user (Miss A in this context), I've seen nothing to suggest this was the case here.

Miss A may have allowed – by means of apparent authority – her sister to use her account. However I do wonder about how her sister could have logged on as Miss A. I know that both sisters look alike – and are of a similar age – but I wouldn't expect the facial recognition to believe they were the same person. Miss A's aunt has suggested her sister set up her own face to be recognised on Miss A's phone. However I'm not sure why she would do that unless she was in the habit of using Miss A's phone. I've not seen any evidence from Nationwide that this is the case.

I've looked at the various transfers. Whilst initially £2,833 was transferred from Miss A's savings account to facilitate the disputed payment, later that evening – a couple of hours later – further transfers were made. I have to say I think it's unlikely this would have been Miss A's sister risking the chance of making further transactions.

Unfortunately Nationwide's evidence is unable to confirm exactly which biometric was checked when the payment was made.

However I do believe – based on the evidence – the payment was most likely authorised either by Miss A.

I've also gone on to consider the aspect which Nationwide first considered: whether Miss A was the victim of a scam.

Regardless of who made the disputed purchase, I don't believe there's any doubt that

Miss A or her sister was the victim of a scam. This case has all of those hallmarks. I say this because money was sent using T to a new payee for items supposedly seen in person which could only be paid for by making an online payment later on.

I can see from Nationwide's own evidence, they initially accepted Miss A was most likely the victim of a scam. They didn't refund her, however, as I think they found her evidence contradictory and weren't sure which aspect to consider – whether the transaction was authorised or not, or whether Miss A was the victim of a scam. To be fair I think they believed Miss A couldn't get two options to get refunded. And in any case, the Contingent Reimbursement Model code which Miss A feels she can rely on specifically excludes disputed authorised transactions.

I have considered whether Nationwide should have intervened to stop the transaction. However I can see from Miss A's statement that it was very usual for her to transfer reasonably large sums of money into and out of her savings and current account. I'm not sure they'd have seen the transfer of £2,833 into her current account as unusual.

And yes, Nationwide were aware that a new payee was being set up. A fraud warning was made available so that whoever was making the disputed payment could register this. However overall I don't think I'd have expected Nationwide to take any further action and stop what happened.

Overall I don't think it would be fair and reasonable to ask Nationwide to do anything further.

### **My final decision**

For the reasons given, my final decision is not to uphold Miss A's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 1 November 2023.

Sandra Quinn  
**Ombudsman**