

## **The complaint**

Mr B has complained that Nationwide Building Society won't refund transactions he says he didn't make or otherwise authorise.

## **What happened**

In early 2022, three online purchases were attempted from Mr B's Nationwide current account to a well-known merchant. The last was declined, but the first two went through, totalling around £1,600. They were made from Mr B's usual IP address, using his card details and codes generated by his card and PIN in a card reader.

Mr B says these were probably made by his ex-partner, who lived with him at the time, and would've had access to a record of his card details and PIN which he kept at home. His card was kept with him and was in his possession, as was his phone, though his ex knew his phone's passcode. He and his ex-partner were in different places until later that day. No one else had access to his online banking.

Nationwide held Mr B liable for the payments in dispute. Mr B came to our service.

Our investigator looked into things independently and didn't uphold the complaint. Mr B asked for an ombudsman to look at things afresh, 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.

Broadly speaking, Nationwide can hold Mr B liable for the payments in dispute if the evidence suggests that he authorised them.

According to Nationwide's technical evidence, the payments in dispute were made from the same IP address Mr B used for his online banking before and after, using a code generated by his genuine physical card and the correct PIN in a reader. In order to generate this code, the reader needed to read the physical chip in Mr B's real card – this was not done with a cloned card. So as far as I can see, these transactions were properly authenticated.

I'll then consider whether the evidence suggests that it's most likely Mr B consented to the transactions, or not.

The first possibility I've considered is that the payments were made by someone who Mr B didn't know – i.e. a third-party thief or fraudster. The payments were made from Mr B's IP address, with no signs of hacking or unauthorised use. They also used his physical card. Mr B said the card was in his possession at the time, and I can see this was the case as he used it to make payments in physical shops shortly before the disputed payments, and still had it afterwards. So it wasn't in a third party's possession. And there's no likely or plausible way an unknown party would've known Mr B's PIN here. We can be satisfied that the disputed payments were not made by any unknown party.

Next, I've considered the possibility that someone known to Mr B – i.e. his ex-partner as he suggested – made the transactions without his permission. I accept it's possible that they may have had access to a record of Mr B's card details and PIN.

However, again, the transactions were authenticated using Mr B's real physical card. Mr B previously confirmed he kept the card with him and it was in his possession at the time. And I can see that was the case as he used his physical card for in-person payments shortly before the disputed payments, then he confirmed he still had it with him when he spoke to Nationwide very shortly after the disputed payments. It's not likely or plausible that his ex-partner was able to take, use, and replace Mr B's card, all without him noticing, and in such a tight timeframe – not least when Mr B said that he and his ex-partner were in different places and were not physically together at the time of the payments.

Similarly, while less conclusive, the technical evidence also indicates that the disputed payments were made from Mr B's usual device, at the same IP address he used for online banking. There is no evidence of any hacking or unauthorised use, and I've not found any likely or plausible method by which the ex-partner could have bypassed the security involved here. Again, Mr B confirmed that he had his device with him, and I can see that's the case as he logged into his online banking using his biometric fingerprint just minutes after the last disputed payment, from the same IP address. While this is a more minor point than the use of the card, it again does significantly indicate that these payments were authorised.

I've not seen any evidence that makes it seem implausible or unlikely that Mr B could've authorised these payments or given someone else permission to make them. While they were made relatively quickly, there was sufficient time to put them through properly and – again – I can see they were indeed properly authenticated. I don't find the declined payment to be proof of fraud – authorised payments do get declined sometimes, and here the last attempted payment was larger than the account's credit balance.

Lastly, I appreciate that Mr B wants Nationwide to get evidence from the merchant. But Nationwide don't regulate or police merchants and can't compel them to give evidence. While Nationwide could technically have done a chargeback with the merchant, those are voluntary and can only work under certain strict circumstances – none of which apply here – so I do not think they needed to do a chargeback. In any case, as I set out above, I've found that Nationwide already had sufficient evidence that these payments were authorised.

In summary, I'm satisfied that Mr B's genuine card details, physical card, PIN, and IP address were used. It also looks like his device was used. Based on the evidence, there isn't a likely or plausible way that an unknown person did this, and it's not likely that someone known to Mr B did this without his permission either. That leaves only one likely possibility – that Mr B made the transactions or gave someone else permission to make them. Which means it's fair for Nationwide to decline a refund. This is a difficult message for me to give, and I know it's a difficult message for Mr B to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

### **My final decision**

For the reasons I've explained, I don't uphold Mr B's complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 November 2023.

Adam Charles  
**Ombudsman**