

The complaint

Mr M and Mrs M complain that Nationwide Building Society won't refund a cash withdrawal that they didn't make from their account.

What happened

Mr M and Mrs M dispute a cash machine withdrawal of £500 made in the early hours of 1 February 2023 using Mrs M's card details. They explain that they were at home asleep and that the card was still in Mrs M's possession.

Nationwide said it wouldn't be refunding this money. It said that the withdrawal was made using the genuine card and PIN. Mrs M said that the card hadn't left her possession. And this eliminated the possibility of the card details being compromised. Nationwide said that it knew that they had reported the matter to police, and it could look at any new information provided.

Our investigator didn't recommend that the complaint be upheld. He said that the information was that the chip on the genuine card had been read and the PIN entered. The last time the PIN had been used with the card was over 50 days earlier. Mr M and Mrs M said that there was no third party who had access to her card that could have taken and replaced it. Mrs M said she hadn't shared her PIN with anyone or written it down. There were no further attempts to use the card.

Mr M and Mrs M said that they didn't agree and wanted their complaint to be reviewed. Mrs M had visited the bank involved and asked for CCTV but was told to contact police. She had reported the matter to police and asked that CCTV be obtained. This happened late at night, they were at home at the time and the card was in her possession.

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 need to take account of the Payment Services Regulations 2017. And to think about whether Mrs M authorised the payment. That's more than the payment being authenticated but would require her to consent to it. If she didn't authorise it then generally Nationwide wouldn't be able to hold her responsible for it. The payment resulted in an overdraft. And so, where credit is involved, the Consumer Credit Act 1974 applies, and it states that a consumer wouldn't be liable for an unauthorised payment *unless* they consented to someone else having possession of that card.

I won't be able to say *exactly* what happened and I'm thinking about what is *most likely*.

I'm satisfied from the information provided that the payment was authenticated with Mrs M's card details and the PIN. I appreciate that Mrs M believes the card must have been cloned. That's not impossible but we haven't seen cases where the actual chip on a card, needed for this type of withdrawal, has been cloned for everyday use. In any event Mrs M didn't use her card frequently for there to be any recent time when her details could have been

compromised in some way. The last previous record I can see of both the chip on the card being read and the PIN entered was on 8 December 2022.

The first PIN entered at the cash machine on 1 February 2023 was incorrect. But the next entered within 10 seconds was correct. It would be unlikely that a fraudster could guess a PIN even in two attempts. The amount requested was £500 which took the account into overdraft. But Nationwide has provided information to show that there were still available funds through the overdraft limit on the account. There was no other attempted use of the card from the time of the withdrawal at 01:27. And Mr M and Mrs M reported what happened at about 17:30 that day.

I appreciate Mr M and Mrs M have given consistent testimony that they were home at the time. And that the card was in Mrs M's bag in the kitchen and remained in her possession. There was no third party known to them with access to their home they say who could or would have taken and used the card. And an unknown third party who somehow had possession of the card would have been very unlikely to have returned it after use risking detection. The cash machine wasn't the closest to them and was some distance away. Mrs M says she didn't write down her PIN or tell anyone else what it was. There is no third-party CCTV available, and it would be a matter for the authorities to obtain this before it was deleted. And CCTV often doesn't help resolve whether a person making the withdrawal was acting with authority or not.

I've balanced all these factors in coming to my decision. There is no identified point of compromise for the card or PIN. A fraudster in possession of the card and PIN would be unlikely to return it and also would likely have attempted to take as much money as quickly as possible. I know Mr M and Mrs M will be disappointed when I say that I find it was reasonable for Nationwide to hold them responsible for the withdrawal in all these circumstances. It has said it will co-operate with any police investigation as I'd expect. So, I'm afraid I won't be asking it to do anything further about this complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 25 August 2023.

Michael Crewe
Ombudsman