

The complaint

Mrs D is unhappy that Nationwide Building Society won't reimburse payments made by her eight-year-old son using her account.

What happened

In March 2024, Mrs D asked Nationwide to reimburse a series of payments that she'd noticed her young son had made while using her mobile device from February 2023 onwards.

Upon investigation, Nationwide decided to not reimburse any of the payments. Mrs D wasn't happy about this, so she raised a complaint. Nationwide responded to Mrs D and reiterated their decision. Mrs D remained dissatisfied, so she referred her complaint to this service.

One of our investigators looked at this complaint. But they didn't feel Nationwide should be asked to reimburse the payments as Mrs D would like. Mrs D didn't agree with the opinion of our investigator, so the matter was escalated to an ombudsman for a 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.

While I appreciate that Mrs D may have had no knowledge that her son was making the payments about which she is now unhappy using her mobile device, the fact remains that it was Mrs D's son who made those payments using Mrs D's mobile device, and that it was possible for Mrs D's son to make the payments on that device.

As such, I feel that by allowing her son to use her mobile device, and by not monitoring what her son was doing when using that device, that Mrs D should be fairly be considered responsible and accountable for the payments that her son made using that mobile device. And if Mrs D wasn't aware that her son was making the payments using her mobile device, I feel that she reasonably should have been.

Ultimately, it isn't Nationwide's fault that Mrs D gave her mobile device to her son who then made payments on that device while unsupervised. And to that end I note that Nationwide's terms and conditions include the following:

"We won't make a refund if we can show that you did authorise the payment or we reasonably suspect fraud or we can show that with gross negligence you failed to keep your card, security device or security information safe ('gross negligence' means that something you have or have not done was very obviously wrong or careless)..."

You will be responsible for the full amount of a payment if: you have been grossly negligent with (or intentionally shared) your card, or device, or the security details you use to access Telephone Banking, Internet Banking or Banking app"

I feel that this clause applies here, because I feel that by allowing her son to use her mobile device upon which her son could make the payments in question, that Mrs D was being grossly negligent.

Mrs D has suggested that they payments should be considered fraudulent, because they were made without her knowledge or authorisation. But I feel that by allowing her son to access and use her mobile device, and by also therefore allowing him to make payments using that device, that Mrs D did tacitly authorise the payments by way of her negligence in preventing them.

Finally, Mrs D has said that there was no legal contract for the purchases because they were made by her son. However, I'd note that the purchases were made using Mrs D's mobile device, which included a pre-existing payment authorisation set up by her. As such, there was no reason or cause for Nationwide or the merchants in question to believe that it wasn't Mrs D making the payments or that they weren't authorised by her.

However, it should also be noted that this service isn't a Court of Law and so it isn't within my remit to decide on the legality of the matter at hand here. Instead, my remit is limited to deciding what I feel is fair. And, for the reasons outlined above, I don't feel that it would be fair to instruct Nationwide to reimburse these payments as Mrs D wants. If Mrs D would like a legal decision on this matter, then she would need to obtain one via a Court of Law.

All of which means that I won't be upholding this complaint or instructing Nationwide to take any further or alternative action. I realise this won't be the outcome Mrs D was wanting, but I trust that she'll understand, given what I've explained, why I've made the final decision that I have.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 18 December 2024.

Paul Cooper
Ombudsman