

The complaint

Mr S complains that Nationwide Building Society didn't do enough to protect him from losing money to two investment scams.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything here. In brief summary, Mr S has explained that in 2016 to 2018 he made two sets of payments from his Nationwide account. The first set was to a company I'll call G, for what Mr S understood was an investment in a film production. The second set was to a company I'll call A, for what Mr S understood was a commodities-based investment.

Mr S subsequently got in touch with Nationwide to report he'd been scammed. Nationwide didn't reimburse his lost funds. Remaining unhappy, Mr S referred his complaint about Nationwide to us, the Financial Ombudsman Service. As our investigator was unable to resolve the matter informally, the case has been passed to me for a decision.

We emailed Mr S and Nationwide to let them know my intended conclusions before I finalised them, to give them a chance to comment before I finally decided what the outcome should be. Now that Mr S and Nationwide have had sufficient opportunity to comment on my provisional thoughts, I'm now ready to explain 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 decided to not uphold this complaint, for materially the same reasons as previously explained. I'll explain why again, addressing the payments to G first, followed by the payments to A.

G

Payment service providers like Nationwide have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. These are predicated on there having been a fraud or scam. So, a first consideration in determining Nationwide's obligations here would normally be: was G operating a scam as Mr S alleges?

Here though, I don't think the answer to this question makes a difference to the fair outcome to this complaint. This is because if G was *not* operating a scam, Nationwide had no obligation to prevent Mr S's payments to G, and so I couldn't reasonably hold it responsible for not preventing the payments. On the other hand, if G was operating a scam:

- I'm satisfied Mr S authorised the relevant payments. Nationwide would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mr S is presumed liable for the loss in the first instance, in circumstances where he

authorised the payments. That said, as a matter of good industry practice Nationwide should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect Nationwide to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.

- In this case, given Mr S's previous payment of £21,000 in September 2016 to stockbrokers, I would not reasonably expect Nationwide to have thought payments one, two and three sufficiently unusual, uncharacteristic or suspicious to warrant intervention before processing. Collectively they amounted to a very similar amount to the previous payment to stockbrokers. And they were in my view otherwise insufficiently remarkable or suspicious for Nationwide to be obliged to intervene.
- Given their size, the subsequent four payments at the end of January 2017 probably ought to have warranted intervention from Nationwide before it processed them. In these circumstances, I would reasonably expect Nationwide to have paused these payments pending enquiries with Mr S; and to have then spoken with him to ask him who the payments were for, what they were for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. I think if this had happened, Mr S would have explained the payments were an investment with G in a film production. I see no reason, on probing from Nationwide, why Mr S wouldn't also have explained what he's since said: that the investment was in an IDMB-listed feature film, with anticipated profits of up to 20% within 12 to 18 months once the film was completed; that he was enticed by the cast of the film and the potential profits; and that he'd checked the company's credentials online, for example on IDMB and companies house.
- *If G was a scam*, I don't think Nationwide could reasonably have known this. I think it could only reasonably have been expected to warn Mr S about the risk of fraud and scams and the importance of undertaking adequate research and checks before making an investment like this. However, Mr S has said he'd done his research and was happy to proceed. I don't think reasonable intervention from Nationwide is likely to have changed this.

If G was operating a scam, therefore, I don't think I could fairly say Nationwide unreasonably missed an opportunity to prevent the payments (nor therefore Mr S's loss) before they were sent – because I think it's most likely if Nationwide intervened this wouldn't have prevented Mr S from proceeding anyway.

In terms of recovery of the payments *after* they were sent, I understand Nationwide has been in touch with the receiving bank and has been unable to recover the funds. *If G was operating a scam* (which would be the only way Nationwide ought to have been obliged to seek recovery of the funds in this way), it seems to be a common occurrence in scams like this that the receiving account is drained of the funds promptly on receipt, presumably to limit chances of any potential recovery. I don't think it would be unfair to say in a case like this where the scam isn't discovered until quite some time after the payments, it would therefore tend to be unusual for the funds to remain in the receiving account by then. So I don't find it surprising Nationwide was unable to recover the funds. And I'm not satisfied it unreasonably hindered recovery of the funds, nor therefore that it should be responsible for Mr S being unable to recover the funds.

A

I think A most likely was operating a scam. But again, although this time for different reasons, I don't think Nationwide unreasonably missed an opportunity to prevent the payments.

This is because the prior activity on Mr S's Nationwide account would be an important consideration in deciding whether the payments were sufficiently unusual or uncharacteristic for the account, or otherwise suspicious, such that Nationwide ought reasonably to have been obliged to have paused them, pending further enquiries with Mr S, before allowing them through. And by the time of Mr S's first payment to A in July 2017, there were many recent and regular payments from his account for amounts comparable to or greater than the payments he sent to A (including, but by no means limited to, the payments already made to G, which as I've explained, I think Mr S would likely have proceeded with even if Nationwide had sought to intervene in them in January 2017). So I'm not persuaded, given previous account activity, that I could say the payments to A ought to have looked sufficiently unusual, uncharacteristic or otherwise suspicious to Nationwide to say it reasonably ought to not have allowed them through without first speaking to Mr S. So I don't think I can fairly say Nationwide unreasonably missed an opportunity to prevent the payments, nor therefore Mr S's loss, before they were sent.

In terms of potential recovery of these payments after they were sent, Nationwide did not try to recover the funds from the receiving bank because it thought the matter between Mr S and A was a civil dispute, rather than a scam. I've said above that I think that A most likely was operating a scam. So I don't think this was right: I think when Mr S notified Nationwide of his loss, Nationwide ought not to have arrived at the conclusion it was a civil dispute, but ought to have, instead, contacted the receiving bank to try to recover Mr S's lost payments to A. However, I'm satisfied from information I've seen that Nationwide would not have been able to recover any of these payments from the receiving bank beyond March 2018.

Mr S has said he notified Nationwide well before 2022, and soon after the payments, that he'd been scammed. But correspondence I've seen between Mr S and A indicates even if Mr S did contact Nationwide before 2022, this would most likely not have been until around August 2018, and certainly not in March 2018 or before. So I'm satisfied that when Mr S notified Nationwide he'd been scammed by A, the funds wouldn't have been recoverable from the receiving bank, and therefore I can't say Nationwide unreasonably hindered recovery of these funds, nor therefore that it should reasonably be held responsible for the loss of these payments.

I note Mr S has referred to an interest-bearing loan he says was used to fund the payments. Nationwide has only been able to point us only to a Nationwide loan Mr S took out in February 2021 (which postdates the relevant payments). Mr S also hasn't provided any further detail on this. In any event, even if Mr S took out a previous loan that he used to fund the relevant payments, I don't consider this would change things: for the reasons already explained, I'm not persuaded Nationwide can reasonably be held responsible for the loss of the payments. Nor would I, therefore, think it would be fair to tell Nationwide to compensate Mr S for any interest he paid on a loan as a result of the payments. If Mr S has any loans with Nationwide that he's unhappy about for different reasons, that would be a matter for him to take up separately, in the first instance with Nationwide directly.

I realise this means Mr S is out of pocket. However, for the reasons I've explained, I don't think this is Nationwide's fault.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 September 2023.

Neil Bridge
Ombudsman