

The complaint

Mr and Ms H complain that Nationwide Building Society ('Nationwide') won't refund the money they lost in a scam.

What happened

Mr and Ms H held a joint account with Nationwide. As Mr H made the payments and has corresponded with Nationwide and this service, I'll mainly refer to him in this decision.

In 2017 Mr H wanted to do a PHD and saw an advert about a company that could help. Mr H made a faster payment of £2,500 to this company on 21 December 2017 and a card payment to a different company (but that seems to relate to the same scam) for £2,500 the following day. Mr H didn't receive the services he expected but says he was out of the country and didn't raise the matter with Nationwide until March 2022.

Nationwide didn't agree to refund Mr and Ms H. It said it acted reasonably at the time the payments were made and couldn't apply new guidance to events that took place in 2017. Nationwide also noted that it had tried to recover Mr and Ms H's funds but hadn't been successful.

Mr and Ms H were unhappy with Nationwide's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said the payments Mr and Ms H made weren't so unusual that Nationwide ought to have intervened when they were made. The bank that received the transfer of £2,500 confirmed that no funds remained, and Mr and Ms H no longer have the right to a chargeback given the time that has elapsed since the debit card payment was made.

Mr and Ms H weren't happy with the investigator's findings. They referred to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and the fact Nationwide had signed up to it. Mr H also said that it was unreasonable of Nationwide to reward a fraudster at their expense.

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.

In broad terms, the starting position in law is that Nationwide is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. Mr H made and authorised these payments, although I accept that when he did so he didn't think his funds were at risk.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Nationwide should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Nationwide acted fairly and reasonably in its dealings with Mr H when he authorised the payments from his joint account with Ms H or whether it could and should have done more before processing them.

Mr and Ms H's account was a current account that was rarely used. But I'm not persuaded the transactions they made in December 2017 were so unusual and out of character that Nationwide ought reasonably to have intervened and asked them proportionate questions about them. The two transactions were relatively low in value and were to two different payees. I don't consider there was anything concerning about either of them that should have been apparent to Nationwide at the time. In the circumstances, I consider that Nationwide acted reasonably in processing them.

Mr H has said Nationwide should refund him under the CRM Code. The CRM Code came into effect on 28 May 2019 and applies in certain circumstances after this date. The CRM Code isn't retrospective, so I can't apply it to transactions that were made by Mr H in December 2017 before it came into force.

Chargeback is a process that allows debit and credit card holders to reverse a transaction when there's a problem with the goods or services they have purchased, so could be relevant to the card payment Mr H made as part of the scam. It is organised and run through the overarching card scheme (Visa for Mr and Ms H) but customers wishing to use the service must go through their card issuer (Nationwide in this case). There are strict time limits to raise a chargeback though (120 days from the date of purchase). Mr and Ms H are well outside of this time limit and so a chargeback in respect of the debit card payment wouldn't have been successful.

Overall, whilst I'm sorry to hear that Mr and Ms H have been the victims of a scam, I can't reasonably ask Nationwide to refund them.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H and Mr H to accept or reject my decision before 6 November 2023.

Jay Hadfield
Ombudsman