

The complaint

Ms B complains that Nationwide Building Society ('Nationwide') won't refund the money she lost after falling victim to a scam.

What happened

In 2020, Ms B's sister was recommended an investment. After investing some of her own money, she was told that she would get an incentive for any new investors she could get to open an account. As a result, Ms B decided to invest and sent two payments totalling £7,000 to her sister's account in December 2020, with the funds sent by her sister to the scammer.

Ms B became aware that she'd fallen victim to a scam when another family tried to withdraw money from their investment but was unsuccessful. Initially Ms B's sister raised a fraud claim with her bank for all of the funds that were lost by the family. But she was told that each person who transferred money to her as part of the scam had to raise a complaint with their own bank for their individual loss. As a result, Ms B raised a fraud claim with Nationwide.

Nationwide considered Ms B's fraud claim but declined to refund her. Nationwide said that as Ms B sent the money to an existing trusted payee, they weren't aware that the payments were made with the intention of investing and weren't liable for her loss.

Ms B wasn't happy with Nationwide's response, so she brought a complaint to our service.

Ms B's complaint initially referred to three payments she'd made as part of the scam, totalling £12,000. Following a review of her case, Ms B confirmed that her loss only related to two payments totalling £7,000.

The investigator who reviewed Ms B's complaint ultimately upheld it, recommending that Nationwide refund 50% of Ms B's loss.

Ms B accepted the investigator's opinion. However, Nationwide disagreed saying they wouldn't have identified a scam risk as the payment wasn't unusual or out of character and that Ms B's loss occurred when the funds left her sister's account.

As the complaint couldn't be resolved, it was passed to me to review.

My provisional decision

On 21 November 2023, I issued my provisional decision in which I said:

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. When Nationwide made the payments, it was complying with Ms B's instructions. At the time, Ms B wanted to pay her sister and there was no mistake made as the money was sent to the correct account details. Although, I appreciate that Ms B made the payments without realising she was the victim of a scam at the time.

Nationwide are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this, in all but a limited number of circumstances.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that an exception applies. In this case Nationwide say Ms B made the payment without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

Having considered the information carefully, I agree that Nationwide can rely on an exception to reimbursement for the following reasons:

- Ms B was told that she could reach a return of around £70,000 in six months, this was too good to be true based on the low amounts she was looking to invest.
- Ms B was told she would be paid £1,250 for anyone else she could get to open a trading account. This should've been concerning for Ms B, as a genuine investment firm wouldn't make an offer like this.
- Ms B didn't receive any paperwork, account opening documents, terms and conditions, or other types of material that I would expect if she was investing with a genuine investment firm.

Taking all of the above points into consideration as a whole, I think Ms B should've been concerned about what she was being offered and whether it was a legitimate investment opportunity. And, had she carried out basic online checks, she would've seen warnings about this being a scam with posts from as early as November 2020. So, I'm not satisfied that Ms B had a reasonable basis for believing the investment was genuine.

However, I've also considered whether Nationwide have met the obligations set out for them under the CRM Code.

In this case, I'm not satisfied that Nationwide should've identified a scam risk, so they weren't required to provide Ms B with an effective warning. I say this taking into account that the payments made were to an existing payee who Ms B had transferred funds to on multiple occasions previously and that the payments were made several days apart. Also, Ms B had previously made genuine payments for similar or larger amounts from her account, including a transfer of £10,000 and a transfer to her sister of £3,000. On that basis, I'm not satisfied that these payments would've appeared sufficiently out of character or unusual to Nationwide that they should've identified a scam risk or intervened prior to following Ms B's payment instructions.

My provisional decision was that I didn't intend to uphold Ms B's complaint.

Responses to my provisional decision

Nationwide responded saying they accepted my provisional decision. However, Ms B disagreed with the outcome I'd reached and raised the following points:

- Other members of her family who fell victim to the same scam were refunded, including a family member who also banked with Nationwide who was given a full refund.
- The scam was particularly sophisticated, which made it challenging for even the most

vigilant individuals to detect.

- It's not fair for me to base my decision on prior transactions she had made from her account, including payments to her sister's account.
- Nationwide should've intervened when she made the two payments and should've questioned the end account held by the scammers who ultimately got the funds.

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 reconsidered the information on the case, along with Ms B's reasons why she feels she is entitled to a refund, I'm not persuaded that she is entitled to a refund. I'll explain why.

While other family members may've been refunded, that doesn't mean that Ms B is entitled to a refund. Each case brought to our service is considered on its individual merits. This includes considering the payments that Ms B made, comparing them to previous transactions she's made from her account and reaching a decision on whether, in this particular case, the payments were sufficiently out of character and unusual that I'm satisfied Nationwide should've identified a scam risk. If I don't think Nationwide should've identified a scam risk, then I wouldn't have expected them to intervene.

In reaching this decision, I have to take into account the previous use of Ms B's account for payments or transfers of a similar size, and that these two payments were made to an existing (and regularly used) payee, as this directly impacts how unusual they would've appeared. Also, there is a balance to be struck between Nationwide identifying payments which could be fraudulent and then responding appropriately to their concerns - while ensuring minimal disruption to legitimate payments. I'm sorry to disappoint Ms B but I'm still not persuaded that Nationwide should've identified a scam risk, so I wouldn't have expected Nationwide to have intervened before processing the payments.

I fully accept that Ms B was the genuine victim of a sophisticated scam and I'm sorry that she has lost a substantial amount of money. However, having carefully considered all the points she's raised, I'm not satisfied that I can fairly ask Nationwide to refund her.

My final decision

My final decision is that I don't uphold this complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 31 January 2024.

Lisa Lowe
Ombudsman