

## The complaint

Mr M complains that Nationwide Building Society will not refund money he says he lost to an investment scam.

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I'll focus on giving the key reasons for my decision. This is not a discourtesy to Mr M or Nationwide – it simply reflects the informal nature of our service.

## 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 agree with the conclusions reached by the investigator for the following reasons:

- It's common ground that Mr M authorised the disputed payments made to FXBFI
  Broker Financial Invest Ltd (trading as 101Investing.com) using both his Nationwide
  debit card and credit card. The payments were requested by him using his legitimate
  security credentials provided by Nationwide, and the starting position is that banks
  and building societies ought to follow the instructions given by customers in order for
  legitimate payments to be made as instructed.
- Still, I've considered whether there was any obligation on Nationwide to have prevented Mr M from making the payments to this merchant. However, I'm not satisfied there was. At the time he made the payments in January and February 2021, FXBFI was regulated in Cyprus and had permissions to operate in the United Kingdom by the domestic regulator, the Financial Conduct Authority (FCA). So, there was nothing to suggest that Mr M was paying a scammer at the time rather than placing an investment with a legitimate offshore broker dealing in high risk trades.
- I appreciate those permissions have since been withdrawn by the FCA in April 2021. But, crucially, this was after Mr M made the payments in question. So, even if there was any reason for Nationwide to have stepped in and prevented any or all of the payments when they were instructed, I'm not persuaded that any questioning or discussion about the purpose of the payments would have likely resulted in Mr M concluding that he was falling victim to a scam. At the time of payment, he would have only found that the merchant was an offshore broker that had temporary permissions to operate in the United Kingdom. Indeed, Mr M has said that FXBFI made him aware of its UK authorisation and he took confidence from this.
- Nationwide has no obligation to protect its customers from bad bargains or to provide investment advice. So, given the circumstances here, I do not consider that Nationwide was under any obligation to prevent the payments from being made. And besides that, even if Nationwide had intervened with any of the payments and asked reasonably probing questions, I'm not convinced this would have led to the payments being averted anyway.

- I've also considered whether Nationwide dealt with Mr M's chargeback claim fairly, as there are some circumstances where funds can be recovered via a dispute raised with the merchant. Although I recognise Mr M may disagree, I find that the evidence he has submitted doesn't require Nationwide to take the matter further. As I see it, Nationwide presented the claim to Visa, and received a decline based on the defence received by FXBFI. And according to the chargeback rules, I'm not convinced Nationwide ought to have pursued the dispute beyond what it did.
- For example, one of the ways in which a successful claim can be made at Visa's final stage at arbitration (under reason code 13.3 'Not as Described') is for Nationwide to have been provided evidence that FXBFI made written representations to Mr M guaranteeing an amount of profit/return that he would receive. This service has given Mr M ample opportunity to submit such evidence, which I understand he does not have. Instead, what I have seen is an email from an agent of FXBFI talking generally about a type of strategy that could be employed which is not the same as guaranteeing that Mr M would make a profit if he made a particular trade, investment etc.
- Nationwide was able to recover a £500 payment Mr M made to FXBFI from his credit card. As far as I am reasonably aware, this was managed through the merchant not defending the dispute meaning the claim was successful. As explained, the other transactions were defended with evidence. I have to work on the basis of what I find fair and reasonable, pursuant to industry standards and what I find good practice. Whilst I can see why Mr M may argue that Nationwide ought to have been able to return all of the payments if one was recouped, on account of the evidence, I'm afraid I do not agree; Nationwide received a decline from Visa and was not unreasonable in taking the dispute no further for the other transactions.
- Finally, notwithstanding the chargeback claim, Nationwide has confirmed that Mr M can raise a separate recovery claim for the credit card payments. This is under Section 75 of the Consumer Credit Act. Given the stage this claim is at between the parties, I find it appropriate not to include it as part of this complaint. Accordingly, all I will add is that Mr M can pursue the Section 75 claim aside from this complaint, and his rights to this remain intact whether he accepts my final decision on this case or not.

I appreciate this will likely come as a disappointment to Mr M, and I'm sorry to hear about the loss he's incurred. However, I'm not persuaded that Nationwide can fairly or reasonably be held liable for that loss – so I will not be asking it to take any further action.

## My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 September 2023.

Matthew Belcher Ombudsman