

Complaint

Mr H is unhappy that Nationwide Building Society didn't reimburse him after he told it he'd fallen victim to a scam.

Background

The background to this case is well known to the parties, so I don't intend to set it out in full here. To summarise, Mr H wanted to buy a luxury watch. An acquaintance (who I'll refer to as Mr B) of his said he could help. Mr B claimed he had a contact who was a representative of the manufacturer and worked at a high-end department store. Mr H had known Mr B for over twenty years. He knew him to run a successful business and he owned watches made by the same manufacturer. As a result, Mr H found it plausible that his acquaintance would find it easier to acquire such a watch and that he'd have contacts to help him do so.

Mr H made a transfer of £5,400 to Mr B using his Nationwide account. This was a deposit. He was told that those funds would be passed on to this contact who would place an order on his behalf. He was told he could expect the watch to be delivered around six weeks later. No watch was delivered. I understand Mr H visited the department store to speak to Mr B's contact, but she claimed to not have any knowledge of the order.

Mr H asked Mr B to refund his money. He also told Nationwide that he'd fallen victim to a scam. It notified Mr B's bank and so his account was frozen. Mr B said that the freeze on his account prevented him from returning all of Mr H's money. He paid him £800 in cash and said he'd return the remainder if the fraud allegation made to Nationwide was withdrawn. Mr H did so, but Mr B never paid him the rest of the money owed.

Eventually, Mr H made a complaint to Nationwide and asked that it reimburse him. Nationwide said that, while it was required to refund fraud victims in certain circumstances, it considered that Mr H had a civil dispute with Mr B, rather than being the victim of a scam.

Mr H was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator concluded that it was a scam, but that it wasn't required to refund him under the relevant rules. Mr H disagreed with the Investigator's opinion and so the complaint has been passed to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued my provisional decision on this complaint on 17 November 2023. I wrote:

The starting point under the relevant legislation is that Mr H will generally be considered liable for authorised payments. It's accepted that he authorised the payment to Mr B and so he is liable for it at first instance. However, Nationwide is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Under that Code, firms are expected to reimburse customers who fall

victim to scams, subject to a number of exceptions.

However, the Code is only relevant if I'm persuaded Mr H did fall victim to a scam. It specifically says that it doesn't apply to "private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them ..."

While I can understand why Mr H feels like he's the victim of a scam, there's a high legal threshold for fraud. In order to find that he was the victim of fraud, I'd need to be satisfied that Mr B had an intention to defraud him from the outset. Obviously, I cannot know for certain what was in the mind of Mr B at the time he came to this arrangement with Mr H. As a result, I can only infer what his likely intentions were by looking at the other available evidence. Unfortunately, I'm not persuaded that evidence currently shows that Mr H was the victim of fraud. I can see that he reported the matter to the police but that they don't appear to be treating the incident as fraudulent.

Mr B also shared screenshots of messages he sent to his contact at the department store. These are consistent with him carrying out the promise he'd made to Mr H – making an enquiry with his contact, arranging for a new account to be registered with the manufacturer and so on. I know that Mr H says that he's had it confirmed that no account was ever actually opened for him, but there are other potential explanations for that other than Mr B committing fraud.

I accept that Mr H entered into this agreement because he wanted to buy a watch. Mr B hasn't delivered on his promise and hasn't refunded the remainder of the payment he made. I also know that Mr B has broken off all contact with Mr H and isn't living at the same address. Mr H can bring a civil claim for damages for breach of contract, but I'm not persuaded that the evidence supports the claim that Mr B set out to defraud him. It goes without saying that he should seek independent legal advice before deciding what to do next to recover his money.

Finally, I am aware that the circumstances that have led me to come to this decision may change – for example, the police may decide to carry out an investigation into Mr B. As things stand, there isn't enough evidence to say that this was a scam. However, should new material evidence come to light, the first port of call for Mr H would be to go back to Nationwide to see if that new evidence would lead it to reconsidering reimbursement.

Overall, I don't think this payment was covered by the CRM Code and so I don't find that Nationwide acted unfairly in not reimbursing Mr H.

Mr H disagreed with my provisional decision. He said that he spoke with Mr B's alleged acquaintance who said they had no knowledge of Mr B. He also spoke with the watch manufacturer who told him that Mr B hadn't been in contact with them to set up the account.

I've considered this carefully but I'm not persuaded to depart from the position I set out in my provisional decision. The onus is really on Mr H to provide enough evidence to demonstrate that he's a victim of fraud. I've considered what he's told us, but there are other potential explanations for why Mr H was told what he was told. I don't have the necessary powers to establish what really went on between Mr B, the watch manufacturer and the employee of the department store because I can't compel the other individuals to answer questions or provide me with evidence. Those things might be uncovered in legal proceedings or following a police investigation.

As I explained above, there is a high bar for demonstrating fraud. I can't safely conclude that Mr H was the victim of fraud on the basis of his recollection of conversations he had with the manufacturer and the employee of the department store. I'm afraid the evidence supporting his case simply isn't strong enough.

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 H to accept or reject my decision before 17 January 2024.

James Kimmitt
Ombudsman