

The complaint

Mr M complains N26 Bank GmbH (N26) have not refunded the money which was transferred to one of its customer's accounts as a result of a purchase scam.

What happened

The detailed circumstances of this complaint are well known to both parties, so I will not repeat them all again here. But in summary, Mr M says he fell victim to a scam. He made a payment, by transferring a sum of £430 from his bank account with 'M' to the seller's account, which was held with N26, for the purchase of an iPad. The seller told Mr M the iPad would be sent to him within 48 hours and that he should receive it within three to five days, but unfortunately nothing was received, and the seller stopped responding to Mr M.

Mr M reported this to his own bank, who contacted N26, but no funds remained that could be returned.

Mr M was unhappy with N26 as the recipient bank/payment service provider (PSP) and asked that it refund his loss.

N26 issued its final response after the complaint was brought to our service. It didn't uphold Mr M's complaint. Mr M remained unhappy, so one of our Investigators looked into things. Initially in the absence of any information from N26, she upheld Mr M's complaint and asked that it refund the disputed sum with interest. In response N26 provided information in support of its position. Our Investigator reconsidered the complaint (taking into account the information N26 had shared) and concluded that she couldn't ask N26 to do anything further to resolve the complaint. Mr M disagreed and asked for an Ombudsman to review his complaint.

When Mr M's complaint was passed to me, I could see in response to our Investigator's outcome he'd expanded on his complaint. I could also see how strongly he felt, and how much trying to recover his loss meant to him. So, I spoke to Mr M to explain in greater detail why I couldn't uphold his complaint. I also explained that our service is an informal dispute resolution service, and our role is to look at N26's actions, not investigate the crime or bring the person(s) responsible for tricking him to justice – that would be a matter for the police and courts.

Mr M asked for my written 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'm not upholding this complaint. I appreciate the outcome will be disappointing for Mr M, and I'm genuinely sorry to hear about his loss, but I can't fairly and reasonably ask N26 to refund this. I'll explain why.

Firstly, I note Mr M says the Investigator's outcome favoured *"the scammer and system seems to be favouring fraudulent people"*. I'd like to assure him that we are independent of both parties and we're impartial. We look into complaints brought by consumers who think a financial business has done something wrong that's caused them to lose out. We consider all of the evidence both parties send us to decide if we think a business has treated someone fairly. And it's the nature of looking at complaints that consequently one party will be unhappy with our findings.

Also, we are not investigating the individual(s) that perpetrated the alleged scam as we can't consider complaints about the actions of criminal(s)/scammer(s). I appreciate Mr M's concerns that the individual that tricked him is still operating and potentially defrauding innocent victims. But the actions of a scammer(s) are a criminal matter. I understand Mr M has reported this to Action Fraud, who he says have done nothing to help him. But I still consider the police and courts are better placed to resolve this part of his complaint than we are. I appreciate Mr M's frustrations with the justice system, but I can't investigate the actions of the police or the courts.

I can see Mr M feels strongly that N26 should refund his loss and feels it's unfair that the bank/PSP is unwilling to do so. But I want to be clear that unwittingly falling victim to a scam doesn't entitle the victim to a refund from the bank/PSP that received their money. In these circumstances I could only direct N26 to reimburse Mr M for his loss if I'm satisfied it did something wrong where it would be fair and reasonable to ask it to provide a refund. I'm afraid I can't direct N26 to refund Mr M's loss on the basis that he has suggested it ought to. That being that he acted in good faith when making the payment; and has been the victim of a scam.

When considering complaints of this nature, I can understand why, with the benefit of hindsight, it's sometimes easy to say the recipient bank/PSP ought to have identified the activity on the account as fraud and should've done more to prevent the loss, or it could've done more to assist in the recovery of the funds upon receipt of notification of fraud. However, I must be clear, when deciding this complaint, I need to think about what N26 knew at the time – not what is known today. And where it is supposed (as is the case here) that N26 didn't do enough. My role is to look into the individual circumstances of the case and decide (within my jurisdiction to consider this complaint), based on what I have seen, whether it should have fairly and reasonably done more.

With the above in mind, I'm satisfied N26 carried out appropriate checks to verify the identity of the recipient account holder (in line with its regulatory obligations) when opening the account. So, it follows that I don't think there is any reason, based on the opening of the account, to ask N26 to do more here.

I've reviewed the account statements since account opening and also considered whether there was anything prior to Mr M's notification of fraud that ought to have alerted N26 to the possibility of fraud. I'm satisfied none of the account activity ought to have stood out to N26 as suspicious. So, I don't think there have been any failings by N26 regarding the monitoring of the recipient account, so I can't say it missed an opportunity to prevent Mr M's loss in this way either.

I'm also satisfied that N26 responded appropriately when it received notification of fraud from M. Unfortunately, however, by the time N26 had been told that Mr M's payment had been made as a result of a scam, Mr M's funds had already left the recipient account (in fact these were spent on the day of receipt). So I don't think there were any failings that prevented Mr M recovering his money.

Mr M has asked a number of questions about the recipient account. He wants to know what action, if any, has N26 taken in relation to the account which received his payment. He feels if the account is still operational, or it was for the time between his money being received and N26 being in receipt of notification of fraud from M, it should have removed and returned to him, any funds which were available. In response to our Investigator's assessment Mr M has also expressed that he is unhappy N26 have not reported the recipient account holder to the police. I'm satisfied N26 have taken the steps I'd expect a recipient bank/PSP to take upon receipt of notification of fraud, which is to carry out its own investigation into the allegation and make a decision about whether it allows the account to remain open, provides notice for closure or closes the account without notice. I'm also satisfied that there were no other funds that it could've returned as the account had a zero balance when notification of fraud was received. And it isn't N26's responsibility to report the matter to the police. N26 themselves haven't been a victim of crime, Mr M has – so it would be for Mr M, to report the matter to the police. I'm confident N26 would co-operate with any police investigation – including the sharing of any information if they were to request it.

My final decision

For the reasons outlined above, my final decision is that 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 9 August 2023.

Sonal Matharu
Ombudsman