

The complaint

Miss M is unhappy that Nationwide Building Society won't refund her money that she lost as a result of falling victim to a fraud.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Miss M saw an investment opportunity on a social media platform which offered to double her money. She contacted the person claiming to carry out the investment and agreed to make payments to them. Unfortunately, it later transpired that the person she was speaking with was in fact a fraudster.

Miss M made several payments to the fraudster as instructed through her Nationwide account. But Miss M says that, without her authority, further payments were made from her account and a loan was taken out in her name.

Miss M eventually realised she'd been a victim of fraud and reported the matter to Nationwide. After an investigation of Miss M's claim, Nationwide decided to refund Miss M in part. It found that a new device had been used to carry out some of the transactions and reimbursed Miss M £15,938.63 to reflect this. It also paid £100 for the distress and inconvenience caused by some service errors.

However, it wouldn't refund the remaining payments, or the loan provided, as these were carried out on a genuine device associated with the account.

Miss M was unhappy Nationwide wouldn't reimburse her in full, so she made a complaint to our service where it was looked at by an Investigator. After consideration of the evidence and testimony, they didn't recommend that the complaint be upheld as they concluded Miss M didn't hold a reasonable basis of belief that she was dealing with a genuine investment opportunity. And they also concluded that the disputed transactions and loan were likely authorised by Miss M.

Miss M—through her representative—disagreed with the Investigator's assessment. She felt that the bank failed in its duty to protect her as the transactions were out of character for her account. And had it blocked the payment and questioned it, it likely would have prevented the fraud. Miss M also admitted to authorising more of transactions she'd disputed than she had previously. But maintained that the loan and some of the transactions were not authorised.

As Miss M disagreed with the Investigator's assessment, the matter was passed to me for a decision.

On 2 November 2023 I set out my provisional findings to both parties. These were as follows:

'In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. I've also thought about the Contingency Reimbursement Model (the CRM Code), which Nationwide is signed up to and was in force at the time Miss M made these payments.

The CRM Code sets out that that a firm should reimburse its customer any funds lost as a result of an authorised push payment (APP) fraud unless it can demonstrate exceptions to reimbursement—set out in the Code—apply. The exceptions relevant to this complaint are:

- the customer made the payment(s) without a reasonable basis for believing that the payment was for genuine goods or services;*
- the customer ignored an effective warning, given by the firm, by failing to take appropriate action in response to that warning.*

Did Miss M authorise the payments in dispute?

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.

There is a dispute here about whether Miss M authorised the transactions in part or not. Miss M has changed her testimony to both Nationwide and our service about which transactions she authorised and which she didn't. However, from reviewing the evidence provided by both parties, I find it more likely than not that she authorised all of the payments in dispute, and the loan applied for in her name.

As part of our service's investigation, Miss M was asked a series of questions to establish a point of compromise for her account. But Miss M told our service that she'd not provided her security credentials for her online banking or one-time passcodes sent to set up a new device on her account. She also told our service that no third-party applications or software were downloaded to her device as part of the fraud. Therefore, I cannot see a feasible way in which an unknown third-party could have accessed her online banking and taken control of her account.

Having said that, I can see a new device was registered to her account successfully and was used to make some of the transactions in dispute.

Taking the above information into account, I find it more likely than not that either Miss M authorised the transactions in dispute or provided the relevant security credentials or one-time passcodes to the fraudster to access her account.

Should Miss M be held liable for the disputed loan taken out in her name?

Prior to the disputed transactions, a personal loan to the value of £5,000 was taken out in Miss M's name through Nationwide and paid into her current account.

Miss M says she didn't authorise this loan and received none of the paperwork or agreements associated with it. However, Nationwide has provided evidence that the loan was applied for using the device Miss M usually used to operate her online banking account and was accessed with biometric security. The application was also made using the genuine personal details of Miss M, including her address, email and telephone number.

I therefore find it more likely than not that Miss M applied for this loan and received the

information and agreements associated with it.

Did Miss M hold a reasonable basis of belief that she was paying a legitimate business?

Miss M found the investment opportunity on a social media platform which is not specifically designed to deal with financial markets and accounts. While the fraudster had what looked like a business account, there was no way of knowing from the profile that this was a legitimate firm.

Miss M, who was young and inexperienced in matters of investment at the time, didn't carry out any research on the business. She merely took the business at face value and on the information presented within the profile and by the fraudster.

The information that was presented by the fraudster in conversations ought to have caused Miss M some concern. She was also told that she could double her money: and fast. Basic online checks would have revealed that this was not realistic with legitimate investments. Miss M was also coached extensively regarding how to lie to the bank and get her money through the system – this isn't something I'd expect to see a legitimate business do.

Furthermore, Miss M wasn't even aware of how her money was being doubled and held no legitimate contracts or agreements with the business.

Overall, I'm satisfied Miss M didn't hold a reasonable basis of belief that the business she was dealing with was legitimate. And so it follows that Nationwide can rely upon this exception for reimbursement. I also find that this should be taken into consideration when thinking about Miss M's role in contributing to her losses.

Could Nationwide have done more to prevent Miss M falling victim to the fraud?

When Miss M was first instructed to make payments, she set up four new payees on her account and made four separate transactions:

26 Jul 2021 - £10, £10, £10 and £40

While four new payees being set up in quick succession may be of concern in isolation, the amounts being paid were of such low value that I don't find Nationwide ought to have been concerned and carry out any intervention of the payments; it also wasn't required to deliver a warning in line with the CRM Code.

Following the above payments, Miss M made a follow up payment to one of the new payees for £3,500 on the same day. When considering this payment against Miss M's account history, I find this to have been out of character and unusual in comparison. She'd not made payments from her account to this value before and to a new payee that had been set up that day.

Nationwide ought to have been concerned about this and, at the very least, deliver a warning to Miss M based on these risk indicators. However, when authorising the payment, Miss M chose the option "paying a friend or relative" rather than disclosing it was for an investment, and was therefore delivered a warning relevant to this payment choice. The warning did however state "only criminals tell you...what to tell Nationwide about the reason for your payment", and this was relevant to Miss M's circumstances as she'd been coached on what to disclose to the bank. However, Miss M decided to proceed with the payment regardless of this.

Following on from this payment, Miss M made another for £3,000 to a different payee on the

same day. At this point I think Nationwide ought to have been more concerned. Miss M had set up four new payees and made payments to the value of £6,500 in quick succession. This is highly uncharacteristic when considering her regular account activity and taking into account the considerations above, I think it would have been fair and reasonable for Nationwide to have contacted Miss M and probe the payments being made to ensure she wasn't at risk of financial harm.

Having said this, I'm not persuaded by the evidence that this would have made a difference in the circumstances of this complaint. Having read the messages between Miss M and the fraudsters, she was coached by them on what to do when processing the payment and if the bank were to contact her to question the payments. And it appears Miss M was following these instructions as she was putting the reasons for the payments as what she'd been instructed to do. I therefore find it more likely than not that she'd have told the bank what she'd been instructed to. And this likely would have impeded Nationwide's attempts to identify the fraud and deliver the appropriate warnings.

Looking at the subsequent payments from the account, I find there were likely other points Nationwide ought to have intervened: for example, where Miss M made a payment for £10,000 on 26 July 2021. But again, I'm not persuaded this would have made a difference here. Miss M was coached in what she was to say to the bank when it contacted her. And while her reasons for making the payments may have become less believable the later they were made, I find it likely Miss M would have continued to mislead the bank about why she was making the payments. This is supported by the changing testimony we have seen as part of the claim process and when bringing the complaint to our service.

Miss M has maintained throughout that she'd not made some of the transactions in dispute when it's likely from the evidence that she did. And I must take this into consideration when reaching my findings. This isn't to say that there is malicious intent on Miss M's part; I genuinely believe she's fallen victim to a cruel fraud. I find it likely she's not been forthcoming with information as she's worried about the repercussions. But I can't reasonably hold Nationwide liable for the transactions she disputes where the reliability of her testimony is in question.

Nationwide took the decision to refund Miss M £15,938.63 of the circa £42,000 she lost as it felt these were carried out by a third-party. Having considered the evidence, I'm not persuaded that this is the case. So, I find this reimbursement to have been fair and reasonable considering the circumstances.'

Both parties were allowed until 16 November to provide any further comment or evidence in relation to the complaint before reaching my final decision.

As that deadline has now passed, I'm in a position to deliver those findings.

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.

Both Nationwide and Miss M—through her representative—haven't provided any further comment or evidence for me to consider. I therefore see no reason to depart from the provision findings I've given above.

My final decision

For the reasons I've given, I don't uphold this complaint.

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

Stephen Westlake
Ombudsman