

The complaint

Mrs J complains that Nationwide Building Society ("Nationwide") won't refund over £30,000 she says she lost to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again in detail here. In brief summary, Mrs J says she fell victim to a scam orchestrated by a horse-racing betting syndicate ("L"). She says she was approached by its director, who was a trusted family friend, where she was told she could make risk-free returns.

Mrs J made payments to L totalling around £30,000 between April and June 2018. However, she said she realised it was a scam when she was unable to withdraw her money, and everything publicly unfolded in February 2019 after L's director was arrested. She reported the alleged fraud to Nationwide who refused to provide her with a refund as she had authorised the payments.

Our investigator didn't uphold the complaint. He didn't think any intervention would have likely stopped Mrs J from making the payments in the event that L was operating a scam, as she believed that L's director was a family friend and former policeman that she trusted. Mrs J disagreed, so the matter has been escalated to me to determine.

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've decided not to uphold it for the following reasons:

- The relevant regulations and industry guidance makes it clear that banks have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that Nationwide could have delayed the payments while concerns about the payee were discussed with Mrs J.
- So, I would need to be satisfied that L was operating a scam when the disputed payments were made between April and June 2018 in order to expect Nationwide to have done anything further here. And having considered the evidence, I appreciate that L may have been operating a scam at the relevant time. Its director was declared bankrupt and has since been investigated for fraud by the police. Mrs J's representatives have also shown an email from the police saying they were putting a file together to pass to the CPS to consider whether to charge L's director, although it appears that any formal charges are still yet to be brought.
- However, even accepting that L's horse racing syndicate was operated as a scam, and that Nationwide should have intervened to ask questions about the payments, there

would have been very little to indicate that Mrs J was falling victim to fraud at the relevant time.

- I say this because although L's director may not have been authorised by the FCA to promote any sort of collective investment scheme (if the betting syndicate could even be considered as such), Mrs J said he was a trusted family friend. She said she had been referred to the syndicate by her brother, and also knew of other family members who were making returns. There was no adverse information in the public domain at that time, and L was a registered company on Companies House that was seemingly offering a legitimate service. Therefore, there wouldn't have been anything significant that would've reasonably led Mrs J to believe she was likely being scammed if Nationwide had given such a warning. It does not bear many hallmarks of other common scams, such as being approached out of the blue by someone unknown with a money-making opportunity. So, I'm not persuaded Nationwide could have reasonably prevented the scam in these circumstances even if it had intervened.
- I've also thought about whether Nationwide could have done more to recover the funds after Mrs J reported her loss. In terms of the debit card payment, I can see that Mrs J used her Visa card to purchase an annual membership of L's racing club. Given she became a member of the club after paying her subscription, she wouldn't be able to reasonably claim that she didn't receive what she had paid for. Therefore, it doesn't seem there would be any reasonable prospect of a chargeback succeeding in these circumstances, so I don't think Nationwide has acted unfairly by failing to pursue a claim. In terms of the faster payments, I can see that Nationwide reached out to the beneficiary bank to try and recover the funds, but they do not seem to have been successful. There wouldn't have been much prospect of Nationwide recovering the funds in any event given the time that had passed since the payments were made, and because L has since entered into liquidation, so I'm not persuaded it could have done anything more here either.
- Nationwide is also under no obligation to consider reimbursing the payments under the Contingent Reimbursement Model (CRM Code) given the payments were made before the Code came into force.

I appreciate this will likely come as a disappointment to Mrs J, and I'm sorry to hear about the money she has lost. However, I'm not persuaded that Nationwide can fairly or reasonably be held liable for her loss in these circumstances.

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 Mrs J to accept or reject my decision before 9 November 2023.

Jack Ferris
Ombudsman