

The complaint

Mrs R complains that Nationwide Building Society ('Nationwide') won't refund the money she lost.

What happened

Mrs R is represented in this case but for ease I'll refer to Mrs R throughout this decision.

What Mrs R says

Mrs R says that she was separating from an abusive partner and was introduced to a man I'll call J through a friend. The friend said J was nice, but Mrs R shouldn't give him money. A relationship developed between Mrs R and J, and she says they messaged daily and met on average twice a week – although there were times when J disappeared and was unresponsive.

After a few months J started to ask Mrs R for money. He fabricated a story about owning a gym and a fallout with his business partner and asked for funds to get back on his feet. J also begged Mrs R for money to buy things for his children and for rent, car repairs and to buy a car (£10,000).

Mrs R's representative has listed over 150 transactions of £3 to £10,000 between May 2020 to January 2022 amounting to £42,542.30 that Mrs R says were scam payments and should be returned. There were five payments of £1,000 or more (£2,000, £10,000, £10,000, £1,000, £6,000 and £1,000) but the majority of payments were for less than £300. Many transactions were for amounts like £25. J credited Mrs R's account with £10,458 (including a £9,500 payment between the two £10,000 transactions) leaving an outstanding balance of £32,084.30.

Mrs R says that she got J a fuel card, but he abused it and she had to cancel the card. She says this shows he was dishonest. J also took out phone contracts in Mrs R's name that she was unaware of.

Mrs R says she realised J was a fraudster when the reasons he asked for money became far-fetched. She contacted Nationwide to report what had happened on 16 November 2022. Mrs R also says that she has heard J took money from other women.

Nationwide's response

Nationwide said Mrs R had a civil dispute with J. It noted that J had transferred over £10,000 into Mrs R's account and that this behaviour didn't fit a common fraud trend.

Mrs R was unhappy with Nationwide's response and brought a complaint to this Service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She was unable to say the high legal burden for fraud had been met and said Mrs R had a civil dispute with J. The investigator also didn't think Nationwide should have identified that Mrs R may be the victim of fraud and noted that Mrs R's genuine banking details were used.

Mrs R didn't agree with the investigator's findings and asked for a final decision, so the complaint has been passed to me. She asked for J's bank statements to be reviewed to

establish whether funds were used for the reasons J claimed. Mrs R also noted that whether the police have prosecuted shouldn't be a determining factor given that the police prosecute in less than one per cent of fraud cases. The police also asked Mrs R to urge other victims to come forward, but she was unable to do so.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely (and not just as likely) to have happened based on the evidence available and the surrounding circumstances.

Did Nationwide deal with Mrs R's claim appropriately?

I'm sorry to hear that Mrs R has lost money in these circumstances and of the impact of this on her. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"This Code does not apply to: (b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier".

The CRM Code isn't a general protection for consumers and only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

"...a transfer of funds...where

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

So, the CRM Code only applies where a customer has been the victim of an APP scam - in other words a criminal fraud. In particular, the CRM Code doesn't apply unless it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met.

Applying the above to Mrs R's case, I'd need to be satisfied not just that J misled her, but that he faked a relationship and deliberately tricked her into making payments that he had no intention of returning. I'm not persuaded I can say that is most likely what happened here and will explain why.

As the investigator has pointed out, the evidence here is limited as Mrs R hasn't been able to provide the messages she exchanged with J. In addition to Mrs R's testimony, all I have been provided with is a mobile phone bill in Mrs R's name for August 2021 which shows Mrs R's home address, and that full payment was received by direct debit; an invoice from a fuel card company for £192.45 in October 2021 and a screenshot of a message I believe is from J threatening to end his life if Mrs R doesn't give him £1,000. I'm not satisfied this evidence proves that J acted fraudulently. If the mobile contract was taken out without Mrs R's consent, I question how a direct debit was set up and why a fraudster would use her genuine details. The fuel bill seems high, but I have no knowledge of the agreement that was reached between Mrs R and J when she gave the card to him. The message indicates J used threats but not criminal intent. Overall, the available evidence doesn't help me to assess J's motives at the time Mrs R made the payments.

I also have no other evidence to support a conclusion that J acted fraudulently. There is no evidence of a police investigation taking place or the result of that investigation. Whilst I understand Mrs R's point about the low level of prosecutions, I need to see some persuasive evidence of fraud to ask Nationwide to consider this case under the CRM Code.

In most romance scam cases the fraudster uses excuses not to meet the victim while continuing to ask for funds. In this case Mrs R met J regularly and had a relationship with him. J also paid over £10,000 into Mrs R's account. And the payments Mrs R's representative has listed were spread over a period of over 18 months (but Mrs R's statements show that she's paid J from early November 2019 and he had credited her account from then). These factors do not indicate that J acted fraudulently.

I also don't know if some payments were for the benefit of Mrs R too because, for example, they related to joint expenses.

It is inherently difficult for a bank or this Service to determine in isolation whether Mrs R was deceived into a false relationship which was only for the purposes of taking money from her or whether it was a genuine relationship that had broken down. I don't have the power to compel J to provide me with evidence, or to cross-examine him or have him cross-examined to try and establish his true intentions. Overall, I've not seen sufficient evidence to establish that J fabricated the premise of the relationship in order to obtain money from Mrs R. In the circumstances, the CRM Code doesn't apply.

Should Nationwide have done more to protect Mrs R from financial harm?

There is no responsibility upon a bank to refund victims of civil disputes. But Mrs R has raised concerns that Nationwide did not do enough to protect her which has contributed to the overall loss that she has suffered. She's said the payments she made were unusual and out of character so Nationwide should have done more to protect her. So, for completeness, I've thought about whether Nationwide should have done more to protect Mrs R from financial harm.

Nationwide didn't identify any of the payments Mrs R made as being suspicious at the time she was making them. I've looked carefully at Mrs R's account statements and consider the first £10,000 payment in October 2020 was unusual and out of character for Mrs R and Nationwide ought reasonably to have asked questions about it. But I'm not persuaded that any intervention would have made a difference in the specific circumstances of this case.

Mrs R's representative says Nationwide would have picked up that she was vulnerable, but I'm not persuaded this would have been apparent. Nationwide might have asked what the payment was for and whether Mrs R had ever met J. Mrs R would have said that she was loaning the money to her partner to buy a car. As J was an existing payee Mrs R had made multiple modest payments to, I think this explanation would have seemed plausible to Nationwide so there wouldn't have been a suspicion that Mrs R was being taken advantage of. The second £10,000 transfer to J was made just after J had credited Mrs R's account with £9,500. I don't consider this payment would have caused concern.

I appreciate that Mrs R was in a vulnerable position when she met J. Nationwide wasn't aware of this vulnerability at the time so had no reason to provide additional support. I can't fairly compel Nationwide to do more when the relevant law, rules, codes and good practice do not say that it should.

Overall, whilst I'm sorry to hear about what has happened, I can't fairly ask Nationwide to reimburse Mrs R.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 1 November 2023.

Jay Hadfield
Ombudsman