

## **The complaint**

Mr C and Mrs D complain that Nationwide Building Society failed to recover funds they'd lost in a scam.

## **What happened**

Mr C and Mrs D had an account with Nationwide.

In February 2018 they were sadly the victims of a scam, and lost £8,000. Mr C and Mrs D were informed, by the police, that £2,000 of these funds made their way to a Nationwide account in the name of another consumer, I'll call A.

On 8 May 2018 a freezing order was served on A's account with Nationwide. Unfortunately Nationwide didn't act on the freezing order quickly enough and allowed funds to be withdrawn, including what Mr C and Mrs D believe to be their funds. Mr C and Mrs D complained to Nationwide that they'd failed in their duty to fairly recover their funds.

Nationwide didn't think they'd acted unfairly in failing to recover Mr C and Mrs D's funds. Mr C and Mrs D weren't happy with Nationwide's response so complained to our service.

One of our investigator's looked into the complaint and concluded that Nationwide didn't act fairly in failing to apply the freezing order when they should have done. Our investigator recommended that Nationwide refund Mr C and Mrs D £2,000 plus 8% interest and compensation of £250.

Nationwide initially agreed to the view, and paid £2,000. However, they later changed their position and refused to pay the 8% or the £250. Nationwide explained that on further review they didn't believe the funds in the account belonged to Mr C and Mrs D, and therefore they didn't cause them any financial loss in failing to impose the freezing order on time.

As Nationwide didn't agree the case was passed to me to decide.

I reviewed Mr C and Mrs D's complaint and came to a different conclusion to our investigator. I advised both parties that having reviewed the account statements for A's account I couldn't conclude £2,000 entered the account, and although I agreed Nationwide should have acted on the freezing order I can't conclude that their error led to Mr C and Mrs D losing out.

Mr C advised he didn't accept my thoughts. He made a number of points, in summary:

- Our service shouldn't second guess a Court Order that was issued
- What message does this give the victim's of crime when the law isn't followed?
- Would the public be happy to hear financial institutions don't have to obey the law?
- They've spent the funds so any debt recovery would take time

As Mr C and Mrs D didn't accept my thoughts I've reconsidered my position.

### **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.

For me to conclude that Nationwide acted unfairly and Mr C and Mrs D lost out as a result of their actions I'll need to conclude Nationwide didn't act on the freezing order when receiving it. And, importantly as a result Mr C and Mrs D's money was withdrawn from A's account.

Nationwide have accepted that they failed to act as expected when receiving the freezing order. However, I need to consider whether Mr C and Mrs D's funds were in the account at the time. I've reviewed the statements of A's account, and I agree there's no evidence of Mr C and Mrs D's funds being present. Between the dates Mr C and Mrs D were scammed £2,000 didn't enter A's account. It follows I can't conclude that Nationwide's actions led to Mr C and Mrs D not recovering £2,000, as I'm satisfied their funds didn't enter A's account.

I've considered Mr C's arguments, firstly about the criminal investigation which took place and the freezing order which was issued. As I explained before I agree an order was issued, and it's something which Nationwide should have acted upon, which they accept. So, I'm not saying Nationwide acted fairly in failing to apply the freezing order – they didn't. However, for the reasons I've already explained I can't say Mr C and Mrs D lost out financially if I'm unable to conclude their funds were in A's account – which is the case.

I appreciate that Mr C and Mrs D may have spent the £2,000 Nationwide initially agreed to pay them. I realise this will be very disappointing to them, however I can't say it's unfair for Nationwide to ask for these funds to be returned when I've concluded they don't belong to Mr C and Mrs D. When making arrangements to recover the debt I'd expect Nationwide to treat Mr C and Mrs D with forbearance and due consideration.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs D to accept or reject my decision before 12 September 2023.

Jeff Burch  
**Ombudsman**