

The complaint

Mr S complains that Nationwide Building Society didn't do enough to help him when he sent money to one of their customers to purchase what turned out to be a stolen car.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some key events here. In March 2019 Mr S bought a car from a private seller that he'd seen advertised online. He agreed with the seller that he'd split the payments in two, with half going to each of the seller's two accounts. This complaint is about the money Mr S sent to the seller's account with Nationwide.

Mr S made two payments to the Nationwide account from his own account with a bank I'll refer to as 'H'. Initially £1, on the morning of 13 March 2019. And then, later the same day, a second payment for £11,800. Mr S collected the car and took it home – the seller told him the original registration document would follow on.

Nationwide were concerned about the activity on their customer's account in relation to Mr S' incoming payment for £11,800. They spoke to their customer and weren't satisfied with their explanation about what the funds were for. They placed a 'hold' on the funds while they looked into this. On 23 March 2019 Nationwide contacted H to find out more. H spoke to Mr S to confirm what had happened.

Mr S explained that the payment was towards a car that he had in his possession. But he was getting increasingly concerned and confirmed he hadn't yet received the log book. He said he'd checked all he could including HPI searches and the VIN and registration of the car. He asked H to tell Nationwide to hold the funds.

On 25 March 2019 Mr S reported to H that he'd checked with the DVLA who had no record of having received contact from the seller. He reported to H that he thought he'd been the victim of a scam. H reported what Mr S had said to Nationwide. H later told Nationwide that the scam notification shouldn't have been sent. Nationwide's notes say H confirmed Mr S had the car and it was only the logbook that was outstanding. As a result of this they released the funds back to their customer.

Mr S describes how he was so concerned that around this time he took his car to a local police station. He says they didn't examine it but checked their database and told him everything looked ok.

Ultimately in late April 2019 the police attended Mr S' address and seized the car. It had become apparent that the car was a 'clone' of a genuine car and was stolen. H again reported this update to Nationwide. Mr S complained. He was unhappy that Nationwide had released the payment back to their customer before it had been confirmed that everything was ok. Nationwide sympathised with the position Mr S was in but didn't think they'd done anything wrong.

Before 31 January 2019, generally a sender could only complain to the Financial Ombudsman Service about their own bank in Authorised Push Payment (APP) scam cases. But Mr S' right to refer his complaint about the receiving/beneficiary bank to our service comes about following changes made by the Financial Conduct Authority (FCA) to our jurisdiction rules. These now allow, in limited circumstances, eligible complainants to refer complaints about the bank that received their funds.

The matter was referred to our service and one of our investigators looked into it. She didn't think the complaint should be upheld. As he still disagrees, Mr S has asked for an ombudsman to review his complaint.

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 agree with our investigator and for similar reasons. I'll explain why.

I accept that Mr S has been a victim of crime and has acted in good faith throughout. And I'm sorry to hear he's been a victim in this way. But I can only tell Nationwide to reimburse him if they are responsible for errors (within the context of our service's jurisdiction) that have caused or contributed to his loss.

I've looked at the account activity on the Nationwide account and I agree that it does look unusual. Nationwide correctly identified this unusual activity. All banks have obligations to be alert to instances of fraud. Where unusual activity is spotted, I'd expect them to take appropriate steps to investigate this. In this case, Nationwide asked their customer questions. This is in line with what I'd expect. When they weren't satisfied with the answers given by their customer, they contacted H to seek verification that Mr S' payment was legitimate.

I can see that H initially told Nationwide that they believed this to be an instance of Authorised Push Payment ('APP') fraud. But, the following day they retracted this and said that Mr S had received a car in return for the payments. They said despite the concerns over the logbook, there was no evidence that the car was stolen. On the basis of this Nationwide considered that their customer was entitled to the funds and then allowed them access to them. I appreciate that with the benefit of hindsight this wasn't the case and the car was actually stolen. But I don't think Nationwide reasonably could have assumed that at the time and not allowed their customer to make payments from their account under their mandate to do so.

Mr S isn't a customer of Nationwide, their mandate is to follow the instructions given to them by their own customer. Here, they had suspicions that something might be amiss and they investigated. But once it was confirmed that Mr S had received the car from their customer (and with no evidence at that time that it was stolen), there was no basis upon which they could have continued to deny their customer access to the funds.

And whilst I understand how frustrating and upsetting this must be for Mr S, it wasn't until around a month later that it was confirmed that the car was stolen. Mr S had done extensive research prior to buying the car and as mentioned above even confirmed with the police that all (initially at least) appeared well. I don't think Nationwide's decision to release the funds to their customer was unreasonable in the circumstances. And I don't therefore think that they need to refund Mr S.

Once the car was seized by the police, I can see that this too was reported to Nationwide – but by that point the money had already been withdrawn. So, I don't think Nationwide missed an opportunity for recovery at that point either.

For completeness, I've also considered whether Nationwide did all they ought to have done when opening the account. And whilst I can't share the detail of this with Mr S, I am satisfied that there was nothing that reasonably could have given Nationwide reason to suppose that the account would later go on to be used in connection with fraud or scams. I don't believe Nationwide missed an opportunity to prevent the fraud in this way.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 April 2021.

Richard Annandale
Ombudsman