

The complaint

Mr H complains that Nationwide Building Society (Nationwide) won't refund the money he lost when he was the victim of a scam. Mr H also complains that Nationwide closed his account and registered a fraud prevention marker against him without due cause.

What happened

Mr H says that in the summer of 2018 he was introduced to someone I'll call S and another by a neighbour. S was said to be a lead agent in the UK of a global cryptocurrency platform. Mr H says he was asked to invest in what he has described as a "pyramid scheme" and encourage others to do so with the promise of doubling his investment in a five-month period. He was also shown a promotional video.

Mr H invested his own funds and also those of family and friends. He says he initially paid a middle-man around £22,000 in three separate payments. The middle man retained a commission and transferred the rest to S. Mr H says that he also sold a package to a work colleague for £12,199 and made two payments from his own account of £6,099 and £6,100 in respect of this on 31 January 2019. The work colleague decided not to proceed, and Mr H says he returned his money, so has lost the £12,199 he transferred.

Mr H expected to get his investment back in June 2019 but says this didn't happen. He negotiated with S until January 2020 and then contacted Action Fraud on 7 January 2020. On 15 January 2020 Mr H reported the transactions of £6,100 and £6,099 to Nationwide. Nationwide contacted the receiving bank that day and was told that no funds remained. Mr H also reported the matter to the police in February 2020.

Mr H says that after he reported fraud to the parties I've mentioned above he received threats of violence towards himself and his family and was asked to accept the return of half of his funds in exchange for withdrawing his referral to Action Fraud. Through mediators (who seem to have been acquaintances of S and Mr H rather than qualified mediators) Mr H and S reached an agreement that was signed on 13 March 2020. S agreed to make three payments to Mr H - £5,500 straight away and then two further payments of £5,000 on 1 April and 1 May 2020. The payments were described in the agreement as 'loan' payments, but Mr H says S was returning funds and not providing a loan.

S made the first payment of £5,500 on 13 March 2020 and Mr H emailed Nationwide on 17 March 2020 to say that he was expecting to receive funds after S agreed to transfer £15,500 of the £31,000 owed to settle the matter. He explained that £5,500 had already been transferred and said this meant Nationwide had S's account details to chase the remaining funds. Mr H says S failed to make the next payment, but after some negotiations agreed to a final payment of £10,000. This sum was credited to Mr H's account on 6 April 2020. Mr H then asked S for a further payment of £4,500 as this was the sum outstanding.

On 7 April 2020 Nationwide received a call from another bank that led it to start an investigation into Mr H's account. Nationwide then decided to hold funds in Mr H's account and a family member's account which received funds from Mr H's account. Nationwide also decided to close Mr H's account on 10 April 2020 and added a Cifas marker. The allegations made by the third party were retracted shortly afterwards but Nationwide said its decision to close Mr H's account remained unaltered. Nationwide released the funds it held and on 2 July 2020 removed the Cifas marker.

Mr H thinks Nationwide should have followed his funds to recover the outstanding sums and that it could have done so without freezing his account. He also says Nationwide shouldn't have closed his account and added a Cifas marker or taken so long to remove it. He points to the email he sent to Nationwide advising that he was due to receive funds.

Our investigation so far

The investigator who considered Mr H's complaint didn't uphold it. In summary she said Nationwide acted reasonably in making the payments of £6,100 and £6,099 as they were not unusual or suspicious given Mr H's previous account and payment history. She noted that Mr H had been able to remove all funds before the account was closed. In respect of the Cifas marker the investigator said Nationwide acted reasonably in adding it and took appropriate action to remove it.

Mr H asked for an ombudsman to consider his complaint. In summary he said:

- Nationwide failed to safeguard him from fraud in making the payments.
- Nationwide failed to pursue the fraudster and trace and recover funds from S's accounts.
- Mr H questioned why Nationwide had frozen his account and applied a fraud marker making him look like a criminal when he was the victim of fraud.
- He's had to make multiple calls to get the Cifas marker removed.

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.

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.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Nationwide should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in

some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Nationwide acted fairly and reasonably in its dealings with Mr H when he authorised payments from his account or whether it could and should have done more before processing them.

Did Nationwide act fairly and reasonably in Mr H's case?

During this service's investigation Mr H has provided a newspaper article about the scam he says he and others have fallen victim to. This says Mr H invested £36,500 - £11,500 of his own and £25,000 belonging to family members. As the investigator has explained, I can't consider payments made by family members as part of this complaint. Those family members would need to contact their own banks to attempt to recover lost funds.

Mr H initially made payments to a middle-man who then transferred them to the scammer(s). These payments weren't made to an account controlled by a fraudster and weren't reported to Nationwide as scam payments so I'm not considering them here.

Mr H has also explained that the two direct payments he made totalling £12,199 were initially invested on behalf of a neighbour who then changed his mind. Mr H says he returned these funds to his neighbour, so the loss is his. Even if I accept that Mr H lost funds of his own when he made the two payments of £6,100 and £6,099, I don't consider Nationwide acted unreasonably in making these payments. This is because Nationwide had no reason to question the payments as they were for considerably lower amounts than other payments from the account in the six-month period before the them. Even in the month before the payments in January 2019 Mr H made two transfers for £8,000 and £4,000, so payments of around £6,000 were unremarkable – especially when there were larger transactions before this.

Recovery of funds

Mr H raised a fraud claim with Nationwide on 15 January 2020. It contacted the bank that had received the funds on the same day but was later told that no funds remained. This isn't surprising, given that almost a year had passed since the payments were made and fraudsters usually remove funds quickly. In contacting the receiving bank in a timely manner Nationwide has done all I would expect it to. It's not for Nationwide to complete a criminal investigation or to investigate S's other accounts as Mr H suggests. It is also not for Nationwide to establish where S sent the funds once he received them.

Holding payments

When a bank or building society receives a report that an account may not be operated as expected it is under a duty to carry out an investigation – and this is what Nationwide did. So I consider Nationwide acted reasonably in investigating Mr H's account, although I appreciate that this caused him some inconvenience and stress. Whilst I understand Mr H says he was the victim of fraud and shouldn't have been treated as if he was the criminal, Nationwide was under a duty to complete its own investigation. While it did so, Nationwide placed a hold on certain funds, which is a step I'd also expect it to take. This is because it was possible that another bank would seek to recover these funds on behalf of a customer if it was found they had been received fraudulently.

Closure of Mr H's account

Nationwide has explained that it closed Mr H's account because of security concerns and because of Mr H's management of the account.

Nationwide's terms and conditions say,

“We may close your **account** immediately and without notice in exceptional circumstances. These might include...”

The terms and conditions go on to list reasons why Nationwide may close an account. By using the words, “these might include” it’s clear Nationwide didn’t intend the list to be exhaustive. Having considered Nationwide’s file, and the confidential information it contains, I consider it acted reasonably in closing Mr H’s account without giving the usual notice period.

Cifas marker

The marker that Nationwide filed with Cifas is intended to record that there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds. In order to file such a marker, Nationwide isn’t required to prove beyond reasonable doubt that Mr H is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. Cifas says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

So, I need to consider whether Nationwide has sufficient evidence to meet the standard of proof and load a marker for misuse of facility with Cifas. Having looked at all the information provided, I’m satisfied it has. I say this because:

- I’ve seen evidence from Nationwide showing that another bank notified it that the money paid into Mr H’s account in March and April 2020 was fraudulent, so Nationwide had reasonable grounds to believe that an identified financial crime had been committed.
- The other bank also told Nationwide that the matter had been reported to the police.

In the circumstances, I’m satisfied Nationwide acted reasonably in applying the marker. Nationwide later agreed to remove it, but this doesn’t mean it acted incorrectly in applying it in the first place.

Mr H thinks Nationwide took too long to remove the marker, but I don’t agree. I can see from Nationwide’s notes that Mr H called Nationwide a number of times during its review period when Nationwide was unable to provide much information. The fraud marker wasn’t raised by Mr H until 29 June 2020 and the marker was then removed in early July. I consider this was a reasonable timescale and so I’m not making an award to Mr H.

My final decision

For the reasons I have set out I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 2 September 2021.

Jay Hadfield

Ombudsman