

## **The complaint**

Mr W complains that Nationwide Building Society won't refund the money he lost when he fell victim to an email intercept scam.

## **What happened**

Mr W was in the process of buying a property. He thought he'd received an email from his solicitor requesting a £12,500 payment into the conveyancing client account. Mr W says the email address, font and the secretary's name were identical to the genuine emails he'd previously received.

Mr W explained that he called the solicitor's office after receiving the email to find out what the payment was in relation to, but the person he usually spoke to wasn't available. He's explained he was working away at the time and wanted to get the purchase moving so the sale completed before the end of the Stamp Duty holiday. Thinking he'd been in contact with the genuine solicitors, Mr W made a payment of £10,000 which was the maximum he was able to send.

When Mr W was setting up the payment, the payee details didn't match. Mr W decided to email the sender back to ask about this and was told the no match was fine and happens the first time a payment is made. Mr W explained that he'd had a no match result before when he was sending money to someone whose account was in their maiden name. He added that most of the contact he'd had with the solicitors had been by email, so, overall, the situation didn't concern him.

Later that day, Mr W received another email asking him to pay a further £10,000 to different account details. He thought this was strange and phoned the solicitors again. This time, it was uncovered that the solicitor's emails had been hacked.

Nationwide is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code ('the CRM Code') which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances.

Nationwide looked into the matter but did not refund Mr W. It said there were sufficient controls in place and it felt the appropriate level of care was provided to prevent the scam from occurring. It thought there were further checks Mr W should have made before sending the money. Nationwide contacted the receiving bank to see if it could recover any of the money paid but ultimately this was unsuccessful.

Unhappy with Nationwide's position, Mr W complained. In its final response letter, Nationwide said it hadn't made any error with the outcome of his claim. It did not accept liability for the funds lost. It felt Mr W had authorised the payment at his own risk because he'd been given a warning advising him to phone who he was paying to check the account details and confirm that he needed to pay. It felt there were discrepancies between the genuine emails and the fraudulent correspondence. It said the fraudster used informal language and broken English. It pointed out the fraudulent correspondence did not contain any of the information the genuine solicitor's firm usually included about Stamp Duty, Coronavirus and online crime.

As Mr W remained unhappy with Nationwide's response, he contacted this service and asked us to look into it. One of our Investigators considered the complaint and was satisfied that Mr W's claim should have been reimbursed under the CRM Code. He didn't feel the warnings given by Nationwide were effective. He was also satisfied that Mr W had a reasonable basis for belief when he made the payment. He said Nationwide should refund the payment in full along with 8% simple interest.

Nationwide disagreed. It said it provided information to Mr W at three key points during the payment journey including displaying a bill, invoice or property sale warning which focussed specifically on the scam he fell victim to, but he still proceeded to transfer the money. It pointed out that Mr W had paid the solicitor's correct account details once before when he'd first instructed them. It said the genuine emails from the solicitor contained a prominent and bold warning about this specific situation, but the fraudulent ones did not. It said that the online warning message shown when Mr W was making the payment pointed out that if he had received account details in an email this was probably a scam. It felt the information Mr W was given clearly addressed all of the key features of the scam he fell victim to along with simple, practicable action which would have prevented it. It also felt it had explained the consequences of proceeding with the payment.

It pointed out that Mr W had tried to act on the warnings by attempting to contact his solicitor to verify the account details. Nationwide said the response he received provided no adequate explanation for this discrepancy. It challenged the email Mr W received, pointing out that it was not part of an existing chain of correspondence and went into Mr W's junk mailbox. It felt there were clear indicators this was not genuine email correspondence.

Nationwide said Mr W had made the payment based on an inadequate explanation he'd received from the same email recipient he'd doubted since he'd tried to speak to his solicitor by telephone. It concluded by saying this *"falls a long way short of amounting to a reasonable basis for belief."*

As no agreement could be reached, the complaint was passed to me to decide.

### **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 think Nationwide should have refunded the full amount of the payment Mr W made. The payment was covered by the CRM Code and I am not persuaded any of the permitted exceptions to full reimbursement under the CRM Code apply in the circumstances of this case. I'll explain why.

There's no dispute that Mr W made and authorised the payment. When he did so, he believed he was transferring money to his solicitor and didn't know he was really interacting with a fraudster. But the starting point in law is that Mr W is presumed liable for a transaction he authorised, even though it was later discovered that he'd been tricked into doing so.

Nationwide has signed up to the CRM Code. This means that Nationwide should refund Mr W unless it can show that one of the exceptions to reimbursement set out in the CRM Code apply to this case. Nationwide has argued that it can choose not to refund Mr W because he ignored an "effective warning" in relation to the payment being made and because he made the payment without a reasonable basis for believing that the payee was the person the customer was expecting to pay, the payment was for genuine goods or services and/or the person or business with whom they transacted was legitimate.

### *Effective warnings*

Mr W was making a payment of £10,000 to a new payee. Under the CRM Code, Nationwide should have identified a potential scam risk in the payment journey and provided an "effective warning." When considering any warning given, consideration must be given to whether the warning is likely to have had a material impact on preventing the scam.

The CRM Code says, as a minimum, an "effective warning" needs to be understandable, clear, timely, impactful and specific. It must also provide information that gives customers a better chance to protect themselves against being defrauded and should include appropriate actions for customers to take to protect themselves from APP scams.

Nationwide displayed the following warning text to Mr W:

### ***Be aware of scams***

- *Received account details in an email?*
- *Contacted unexpectedly?*
- *Under pressure to pay and not had a chance to compare prices?*
- *Asked for payment upfront?*

*If yes to any of these, this is probably a scam – stop now*

*Always phone who you're paying using the number on their website or letter. Check their account details, and confirm you need to pay. Criminals make their calls, texts and emails look like they're from an organisation or person you trust such as the Government, your solicitor or friends. Even if you're expecting to make a payment, emails are hacked and may be fake.*

*Check with trusted friends and research online whether you really need to pay.*

*View items you're buying before paying. And whether it's an item or service, pay by card. Card payments are better protected than paying accounts directly.*

***If you continue and this is a scam, you're unlikely to get your money back. If you're not sure it's genuine, stop now.***

Taking everything I've seen and been told into account, I'm not persuaded this warning was impactful enough to affect Mr W's decision making in a manner whereby the likelihood of this scam succeeding was reduced.

The warning Nationwide presented to Mr W covered more than one type of scam risk. It contained information relevant to purchase scams and intercept scams, which can be confusing for consumers that don't have specific, in-depth knowledge about particular scam types. A lot of the information provided, such as advice to compare prices and pay by card was not relevant to the situation Mr W was in.

In addition to this, the warning prompts the reader to reflect on whether they have been contacted unexpectedly. But it wasn't unusual or unexpected for Mr W to be in contact with his solicitor by email, so I can understand why he could have thought this information wasn't particularly relevant to him.

Nationwide has suggested that its information must have resonated with Mr W to some extent as he did attempt to phone his solicitor at the critical moment. But when Mr W first tried to phone the solicitor, he's said his reason for wanting to speak to the solicitor was to check what the payment was in relation to. Mr W was a first-time buyer, so it is plausible that a lot of the conveyancing process was unfamiliar to him. I don't think this action in and of itself means that what Nationwide told Mr W went far enough to really bring to life what a scam of this nature looks and feels like.

Mr W has explained that he was unaware of an email intercept scam until it happened to him. He didn't know a fraudster can gain access to and monitor email accounts so as to impersonate a trusted organisation and send emails that come directly from their email address. Nationwide, on the other hand, was familiar with this scam and how it worked. By trying to cover multiple scam risks in the same warning and not sufficiently explaining the importance and the relevance of confirming account details in person or over the phone with the sender, Nationwide made it much easier for Mr W not to recognise his own circumstances in the warning. This meant the warning lacked impact and was less likely to be effective for customers in Mr W's position.

I don't consider that Nationwide did enough to bring to life what an email intercept scam looked and felt like. Mr W wasn't given sufficient information to understand why speaking directly to his solicitor was so important to preventing a loss to this type of scam. He made a judgment to continue with the payment based on the fact he thought he was in contact with the genuine solicitor's firm. He could not have been expected to anticipate what he didn't know about the potential for a solicitor's email account to be hacked.

Overall, I don't think Mr W ignored an effective warning or that it was unreasonable for him to proceed with the payment even after having seen Nationwide's information. This means that Nationwide can't fairly apply it as an exception to reimbursement in this case.

#### *Reasonable basis for belief*

Over the course of the complaint, Nationwide has made comments suggesting Mr W made the payment without having a reasonable basis for believing that the payee was the person he was expecting to pay, the payment was for genuine services and/or the person or business with whom Mr W transacted was legitimate. It has emphasised that it considers Mr W to have fallen a long way short. But I don't think Nationwide has given sufficient weight to the environment created by the fraudster and I'm not persuaded that Nationwide's concerns are enough to establish that Mr W did not have a reasonable basis for belief when making the payment.

Mr W has explained the fraudulent email didn't feel different to the genuine correspondence. Nationwide disputes this. It considers the tone of the correspondence to be too informal and says the writing style ought to have stood out because it used broken English.

But from what I have seen, I think it would have been very difficult for Mr W to tell he'd received fraudulent correspondence. People don't want or expect to be scammed as they are going about their daily business. The email came from the solicitor's genuine email address. As Mr W was unaware of the possibility that the email could have come from someone else, it did not stand out to him. Nationwide has expressed concern that Mr W found the email in his junk mail, but I don't think this, in and of itself, is enough of a reason to say Mr W ought to have had concerns about the legitimacy of the sender. Whilst junk mail filters try to divert unwanted spam messages, it is not unusual for genuine messages to be caught.

I've looked carefully at the genuine emails Mr W received from his solicitor alongside the fraudulent emails. I am not persuaded the fraudulent emails are so obviously untoward that Mr W ought to have been suspicious about them. Both the genuine emails and the fraudulent emails tend to be short, direct and focussed, so the fact the fraudster got straight to the point of requesting a payment didn't give Mr W any concerns about the sender's legitimacy and nor do I consider it ought to have done.

I've thought about the negative Confirmation of Payee match Mr W received. But I don't agree he acted unreasonably by going on to make the payment. The information he was presented with said that some accounts can't be checked because not all account providers are using this service at the moment. It also said that this doesn't mean the details that have been entered are incorrect. Mr W has explained about a previous time when he received a no match message, but the payment did still go to the intended recipient. At this moment in time, Mr W didn't think anyone was trying to scam him. He thought he'd had contact with the genuine solicitor's firm and that he needed to make a payment to move the property purchase forwards. I've thought about the steps Mr W took to reassure himself about the legitimacy of the transaction and whether it was reasonable for him to proceed with the payment. I am not persuaded that Mr W ought to have been more sceptical of the situation. I'm satisfied Mr W fell victim to a sophisticated scam.

### *Overall*

I have carefully considered Nationwide's representations about the warnings it gave and whether Mr W had a reasonable basis for believing the payment to be genuine. But they do not persuade me to reach a different view. In particular, I'm not persuaded that Mr W failed to take the requisite level of care required for Nationwide to choose not to reimburse under the terms of the CRM Code. It follows that under the provisions of the CRM Code, Mr W should have been reimbursed for the loss. So I think it's fair that Nationwide now refunds the money Mr W lost, along with interest as I'll go on to explain below.

### *Should Nationwide have done more to protect Mr W?*

I've thought about whether this payment was unusual and out of character. Mr W's account statements show a payment of this size to a new payee wasn't something he typically did. So I think Nationwide should have gone further than displaying warnings by contacting Mr W and questioning the payment at the time he was making it. If it had done so, I think it's more likely than not that Mr W would have spoken openly about the property he was buying and the contact he'd received from his solicitors asking him to pay some money. He would have shared information about the situation which the building society, with its greater knowledge and experience, would have found concerning, such as new payment details being provided by email and funds being requested before contracts had formally been exchanged. I am

persuaded that, on balance, the fraud would have then come to light.

The relevance of this finding is that Nationwide should pay Mr W interest on the redress that is payable as a result of it falling short in its obligations from the date of loss, rather than the date it decided not to refund him under the CRM Code. I consider 8% simple interest to be an appropriate award in the circumstances of this complaint because the money Mr W has been deprived of came from his current account and it's unclear how he would have otherwise used it.

### **My final decision**

For the reasons I've explained, I uphold this complaint about Nationwide Building Society.

To put things right, Nationwide Building Society should now:

- Refund Mr W for the money that was lost to the scam - £10,000
- Pay 8% simple interest from the date the payment was made until the date of settlement

If Nationwide considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so Mr W can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 June 2023.

Claire Marsh  
**Ombudsman**