

## **The complaint**

Mr B complains that Nationwide Building Society has not refunded him after he fell victim to a vehicle purchase scam in January 2019.

Mr B brings his complaint with the assistance of professional representation, but for readability I will refer solely to Mr B throughout this decision.

## **What happened**

Both sides are aware of the circumstances of the complaint, so I will not detail this at length. I will begin by briefly summarising what happened.

Mr B was looking to purchase a campervan and saw one advertised on a well-known internet marketplace. He bid for the item and won the auction at a price of £3,860. He contacted the seller, and it was agreed he'd pay a deposit of £100 and then the remainder on collection.

But the seller then contacted him to say he needed £100 more now to help pay for a new van he was buying. The seller said they'd take this off the balance due and reduce the price to £3,600. The seller told Mr B his friend would deliver the van to Mr B's address. Mr B agreed and sent a second payment from his Nationwide account for £100.

The seller then asked for a further £400 because of the travel distance. This money was sent by Mr B's parent's account and does not form part of Mr B's complaint about Nationwide. The seller said they'd accept a reduced final payment of £2,900.

Mr B said he'd pay by a service offering buyer protection. But the seller said they didn't use that service. The seller said the driver couldn't accept cash and insisted on full payment in advance because the van would need to be driven some distance.

Mr B then sent a final payment of £2,900. In total he'd sent £3,100 from his Nationwide account over two days.

The delivery didn't take place, and the seller stopped responding to Mr B. Mr B realised he'd been scammed. He reported what had happened to the Police, to the online marketplace and to Action Fraud, but has been unable to recover any money through those routes.

Mr B quickly contacted Nationwide, who attempted to recover the money he'd sent from the recipient account. That account was also held with Nationwide. But wasn't possible – as with most scams of this type, the majority of Mr B's money was already moved on elsewhere by the scammer. Nationwide also said that because Mr B had authorised the payments to be made it wasn't liable to refund him.

In 2022, Mr B complained to Nationwide. Nationwide reiterated that it didn't think it was liable to refund Mr B.

Our Investigator considered the matter but didn't think Nationwide had treated Mr B unfairly. He didn't think Nationwide should have had sufficient concerns about any of the three payment instructions to have prompted intervention before processing them. He didn't find it at fault for following Mr B's instructions to make the payment he requested. Neither did he find Nationwide was at fault for any other reason or that it was otherwise liable for the money Mr B had lost to the scammer.

Mr B didn't agree with the Investigator's findings. Subsequently it came to light that part of Mr B's payments, the sum of £181.61, had remained in the recipient account at the time he'd reported the scam to Nationwide. While it now seems the remaining £181.61 was subsequently removed from the account, if Nationwide had acted immediately in response to Mr B's report then it's possible these funds have been recovered and returned to him at the time.

Nationwide has now offered to reimburse Mr B for that amount, with interest added at 8% simple calculated from the date he'd originally made his payment.

Mr B didn't accept the Investigator's further opinion that Nationwide's new suggested settlement represented a fair resolution to his complaint as a whole, and he has asked for everything to be reviewed and decided by an Ombudsman. So, his complaint has been referred to me to make a final decision.

### **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 be good industry practice at the time.

Having done so, I have reached broadly the same conclusions as those of the Investigator and for similar reasons. I realise this will be a disappointment for Mr B, so I'd like to explain why.

Firstly, I'm extremely sorry to hear about what happened. Mr B was tricked into sending money to someone to purchase a campervan but who instead took his money and gave nothing in return. He was the victim of an APP scam and he's been left out of pocket by a significant sum as a result. He's explained the impact this has had on him and his family members.

However, the main cause of his loss was the scammer who deceived Mr B. It does not necessarily follow that Nationwide is responsible to reimburse him.

It's worth mentioning at this point that, since May 2019, a voluntary code exists to provide additional protection against APP scams (the Contingent Reimbursement Model Code – CRM Code). Nationwide is a signatory to this code. But as the Investigator explained, the CRM Code is not retrospective. Because these three payments were made before the CRM Code took effect, the provisions of the CRM Code aren't relevant to Mr B's complaint.

However, while I therefore find the CRM Code does not apply here, that Code is not the full extent of the relevant obligations that could apply in cases such as this.

First of all, under the relevant regulations, and in accordance with general banking terms and conditions, banks and building societies have an obligation to execute an authorised payment instruction without undue delay. As a consequence, the starting position is that liability for an authorised payment rests with the payer, even if they made that payment as the consequence of a fraud or scam - for example as part of a purchase scam such as this was.

However, where the customer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank or building society to reimburse the customer even though the customer authorised the transactions. I consider that a bank or building society also has a duty to take reasonable steps to protect its customers against the risk of fraud and scams.

Of course, there is a balance to be struck here. It would not be realistic or practical to expect a bank or building society to intervene prior to processing payment in the vast majority of the huge number of payments that take place daily. But I consider that as a matter of good industry practice Nationwide should have been looking out for payments or payment patterns that were significantly out of character or unusual and that might therefore be indicative of the potential for financial detriment to its customer through fraud or a scam. In other words, in situations where on the face of things, there was an apparent and significant risk of financial harm to the customer through fraud or scams.

With all of the above in mind, I've thought carefully about whether the available evidence demonstrates that Nationwide did enough - given the specific circumstances here.

Ultimately, the test I need to apply here is whether the evidence is such that I consider Nationwide ought to have had significant concerns that any of these payments could be indicative of possible financial harm through fraud or a scam – to the extent that this would have overcome its primary obligation to carry out Mr B's payment instructions.

The first two payments Mr B sent as part of this scam from his Nationwide account were for the sum of £100. I don't consider these would have stood out from Mr B's normal spending patterns – there was nothing unusual or out of character here.

The larger payment he made the following day was for the sum of £2,900. Mr B argues that this payment (and the sequence of three payments as a whole) were unusual for him.

But I don't think these instructions were so significantly out of character or unusual that I could find Nationwide at fault for not having taken further steps or intervened before processing them.

While this was larger than most payments Mr B made from his account, I do not think the amount of the payment was such that Nationwide should have been concerned that this might be related to a fraud or scam based on that fact alone. Neither do I think this based on the other information Nationwide could reasonably have expected to know at the time about the payment.

On balance, and taking everything into consideration, I do not find that there was enough here for me to say Nationwide should have intervened rather than fulfil its primary obligation to carry out Mr B's instructions.

So, I don't find Nationwide was at fault here in allowing Mr B to make these payments and I can't fairly require Nationwide to refund him for the remaining losses.

In saying this, I want to stress that I am very sorry to hear about what happened to Mr B and

I am sorry he has lost out. He was the victim of a crime – a scam carefully designed to defraud him of his money. I appreciate that what he's lost here is a significant sum and has had a significant impact on him and his family members since. But it is simply the case that I don't find Nationwide was at fault in making the payments in line with the instructions Mr B gave it at the time. Further, I don't find Nationwide liable to refund him for any other reason – except as detailed below.

### *Recovery of funds*

Nationwide accepts it could have acted more promptly in its attempts to recover Mr B's lost money at the time he first made it aware of the scam. While almost all of his money had unfortunately already been moved on from the recipient account (and so could not have been recovered even had Nationwide acted immediately) some funds did remain at the time Mr B reported the scam - the sum of £181.61. Nationwide accepts fault on this point and has offered to pay Mr B that sum (being the amount it could have recovered at the time but for its delay) together with interest at 8% simple per year to reflect Mr B's having being deprived of this amount for the time he has. I consider that is a fair offer in the circumstances – it is broadly in line with the offer I would have made had Nationwide not already suggested this. I don't require it to do more than it has offered.

### **My final decision**

For the reasons given above, I partly uphold Mr B's complaint about Nationwide Building Society.

If it has not already done so, then within 28 days of being notified of Mr B's acceptance of this decision, Nationwide Building Society should pay him the sum of £181.61 plus interest on this amount at 8% simple calculated to the date of settlement less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 February 2023.

Stephen Dickie  
**Ombudsman**