

## **The complaint**

Miss F is unhappy that Nationwide Building Society has refused to refund the money she lost after falling victim to a scam.

## **What happened**

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

- Miss F met a man (who I will call "Mr H") on a dating website who, over the course of three-months, persuaded her to lend him more than £20,000, which he has not since repaid. Mr H has since pleaded guilty to fraud by false representation. And Miss F has obtained a County Court judgement against Mr H ordering him to pay her £20,850 plus costs.
- Miss F reported the fraud to Nationwide, but it refused to refund any of the transactions. The society said the matter was a civil dispute between Miss F and Mr H. But, in any event, even if it had intervened – which it didn't think it ought to have – the society didn't think this would have prevented the scam given the circumstances of the payments and Miss F's relationship with Mr H. Miss F didn't agree with Nationwide's findings, so raised a complaint with us.
- Our investigator thought Miss F had been scammed and Nationwide should have reimbursed the money she lost in line with the requirements of the Contingent Reimbursement Model Code. But Nationwide disagreed – it maintains that this is a civil dispute and says the complaint ought to be dismissed.

## **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've reached the same outcome as the investigator for much the same reasons.

### *Should I dismiss this complaint?*

The rules under which we operate say I can dismiss a complaint without consideration of the merits in various circumstances including, under DISP 3.3.4A, where:

*"(3) The subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits."*

I don't agree with Nationwide that the subject matter of this complaint *has* been decided in court. As set out above, a County Court has ruled that Mr H owes Miss F money and Mr H has pleaded guilty to fraud by misrepresentation. But the complaint I'm being asked to consider is whether Nationwide ought to reimburse Miss F. That matter has not been

considered by the courts.

I appreciate Nationwide's concern that it might reimburse money which Miss F has already, or may in the future, obtain directly from Mr H. But I've seen nothing to suggest that Miss F has received any money back from Mr H yet and the likelihood of him repaying anything in the future seems slim. Also, Miss F has agreed to indemnify Nationwide in the event that it does reimburse her, but she later manages to recover any money from Mr H.

In all the circumstances and having considered all of the possible dismissal reasons, I don't think it's appropriate to dismiss this complaint.

#### *Is this case covered by the C Contingent Reimbursement Model Code?*

There's no dispute that Miss F made the 27 disputed payments to Mr H (and one to his mother) from her Nationwide account. That means they were authorised by her. So the starting point under the Payment Services Regulations 2017 and the account terms and conditions is that Miss F is responsible for the payments along with any resulting losses.

But the matter doesn't end there. I've also considered whether Miss F should have received a refund of the money she lost under the provisions of the voluntary Contingent Reimbursement Model Code ("the Code").

Nationwide has signed up to the Code and the starting principle is that it should reimburse a customer who is the victim of an authorised push payment (APP) scam except in limited circumstances.

But the Code doesn't cover *"private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier"*. I think this is the exception Nationwide is referring to when it talks about the matter being a civil dispute between Miss F and Mr H.

So I first need to decide if this is a civil dispute or if Miss F has fallen victim to a scam.

I accept, as Nationwide seems to be suggesting, that the situation in which Miss F found herself was not entirely typical of the romance scams we tend to see. It started with initial contact being made through a dating website and that's common to many romance scams. But what's more unusual here is that Miss F and Mr H did then meet in person a number of times and I note Miss F loaned her car to Mr H. At first glance, this might look like a genuine relationship between two people.

But, in this particular case, I don't think that means Miss F wasn't scammed. Nationwide has accepted that Mr H lied to her and the money probably wasn't used to pay for the things Miss F thought they were being loaned to cover. And the evidence I've seen, including media reports about the Magistrate's Court case, suggests that it goes further than that.

I think Mr H deliberately set out to deceive Miss F – he struck up a false relationship with her and persuaded her to give him money which he had no real intention of repaying. I say this not least given that he has pleaded guilty – and been sentenced to more than two years in prison – to fraud by false representation. Overall, I'm satisfied that it's more likely than not Mr H acted fraudulently.

So I'm satisfied that Miss F's claim should be considered under the provisions of the Code.

#### *Should Nationwide reimburse the money Miss F has lost?*

The Code sets out standards which Nationwide must adhere to and this includes prevention measures. In effect, Nationwide must take reasonable steps to provide its customers with “effective warnings” whenever it identified an APP scam risk in a payment journey.

But the Code places a level of care on Miss F too. And Nationwide may choose not to reimburse Miss F if it can establish that:

- Miss F ignored what the Code refers to as an “effective warning” in relation to the payments she made.
- Miss F made the payments without a reasonable basis for believing that: the payee was the person she was expecting to pay; the payment was for genuine goods or services; and/or the person or business with she transacted was legitimate.

There are further exceptions within the Code, but none that apply in this particular case.

Nationwide says it didn’t consider the payments Miss F made to Mr H to be significantly unusual given the historic activity on her account. In effect, I think the society is saying it didn’t identify a scam risk, so it wasn’t required to give any effective warnings. I don’t entirely agree with that assertion, given the pattern that started to form fairly rapidly after Miss F first set up Mr H as a new payee. But, the more important point here is that if Nationwide didn’t give any warnings then it follows that Miss F can’t be said to have ignored any effective warnings.

I also don’t think Nationwide hasn’t done enough to establish that Miss F didn’t have a reasonable basis for believing she was loaning money to Mr H which he intended on paying back. I say this having considered what Miss F has told us and having read the extensive messages that passed between Miss F and Mr H.

Despite what Nationwide has said, it seems clear to me that the ‘relationship’ between Miss F and Mr H (and the related scam) started on 23 May 2021, just five days before the first disputed payment was made. They may have first met towards the end of the previous year. But the messages I’ve seen suggest a relationship had not developed – largely due to Mr H’s unreliability – and there had been a gap, likely of some months, before Mr H instigated contact again on 23 May 2021.

The first suggestion that Miss F might help with Mr H’s medical bills came from Miss F and subsequent discussions about Mr H’s money troubles and Miss F’s further offers of help were interwoven with discussions about their daily lives, phone calls and face-to-face meetings. The messages show that, at times, Miss F expressed concern that Mr H might be “stringing her along” often because he kept cancelling the plans they had made to meet up. But I think Mr H provided plausible, convincing explanations – including hospital admissions, supported by photographs – which allayed Miss F’s fears. And I don’t think these explanation were so far-fetched that Miss F ought to have had concerns that Mr H might be acting dishonestly in order to persuade her to part with her money.

In all the circumstances of the complaint, I think Nationwide ought to have reimbursed Miss F in accordance with the provisions of the CRM Code.

### **Putting things right**

Miss F sent 27 payments to Mr H between 28 May and 27 July 2021, totalling £19,990 and I think Nationwide should refund all of those payments.

Miss F also sent one payment of £820 to what seems to have been Mr H’s mother’s account

during that timeframe. But that payment was also made at Mr H's instigation – to cover money his mother had loaned to him to pay his mortgage – as part of this scam. And I've seen nothing which suggests Mr H or the recipient has since returned that money. So Nationwide should refund that payment too.

Nationwide need not reimburse the final payment Miss F made to Mr H – £265 on 3 August 2021. That's because the messages Miss F exchanged with the scammer around that time, and the official MOT records, suggest that money was used to pay for repairs to her car and MOT tests.

I think, if Miss F hadn't fallen victim to this scam, the money she paid away would likely have remained in her savings account, earning interest.

With this in mind, and for the reasons outlined above, I think Nationwide Building Society should:

- Refund £20,810 to Miss F.
- Add interest on the above refund calculated at Miss F's originating savings account rate from the date the claim was declined – which appears to be 27 October 2021 – to the date settlement is made.

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

### **My final decision**

My final decision is that I uphold this complaint and I instruct Nationwide Building Society to settle the matter as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 20 April 2023.

Ruth Hersey  
**Ombudsman**