

The complaint

Mr L is unhappy Nationwide Building Society (“Nationwide”) hasn’t helped him retrieve money he lost when his cheque was intercepted.

What happened

Mr L closed his ISA account in November 2021 at which point Nationwide sent him a cheque for the balance of just over £40,000. Unfortunately, the cheque was intercepted and paid into an account fraudulently opened in Mr L’s name, at a financial institution I shall refer to as T.

Mr L contacted Nationwide on 30 November 2021 to enquire why he hadn’t received his cheque yet. He was incorrectly told it hadn’t been sent yet. Mr L is unhappy as he believes this incorrect information ultimately resulted in a missed opportunity to prevent the fraud. Nationwide issued its final response recognising it had given Mr L incorrect information on the phone call. However, it said no error was made in respect of the actual cheque. It had issued the cheque in Mr L’s name and paid the cheque correctly.

Mr L remained unhappy as he’d lost the value of the cheque, so referred his complaint to our service.

During the investigation, our investigator was able to contact T and establish that it had taken steps to freeze the fraudulently opened account on 2 December 2021, as it suspected something wasn’t quite right. So, most of Mr L’s money was safe and being held by it. It told us that it had ringfenced £39,195.18 and was awaiting an indemnity from Nationwide so it could be returned.

Our investigator upheld the complaint saying Nationwide should have investigated Mr L’s concerns a lot sooner as because it didn’t, he’s been without his funds a lot longer than he should have been. She therefore recommended Nationwide refund Mr L the amount of the cheque regardless of the indemnity and pay 8% interest on the money.

Nationwide didn’t agree with the view, explaining that it wasn’t at fault for Mr L falling victim to the fraud and therefore wasn’t liable to refund him the value of the cheque or the 8% interest. However, it offered £150 compensation for the fact it could have raised an indemnity sooner. Nationwide then submitted an indemnity, and the £39,195.18 was returned to Nationwide and subsequently to Mr L, on 27 February 2023. Nationwide paid Mr L the difference in the amount totalling £1,487.82 so he received the full amount.

Because Nationwide disagreed, the complaint has been passed to me to decide.

What I provisionally decided – and why

I issued my provisional decision on the complaint on 24 July 2023. I concluded the following:

“I’m very sorry to hear Mr L has fallen victim to fraud in this way, I can appreciate this has caused him a great deal of worry and inconvenience. I’m pleased he has now received the value of his cheque back. Ultimately, it is the fraudsters who are responsible for what Mr L

has gone through here, as they are the ones who intercepted the cheque and opened an account in his name, which enabled the cheque to be cashed.

However, I've looked at whether Nationwide could have prevented the fraud at any point. I'm satisfied it paid the cheque correctly. The cheque was written by Nationwide so its main responsibility in this instance is to ensure the cheque is paid into an account in Mr L's name – which it was. It therefore wouldn't be responsible for refunding Mr L under normal circumstances.

I've considered the call Mr L had with Nationwide on 30 November 2021. A cheque can be cancelled up to the point it is presented for payment. Nationwide has provided a copy of the cheque which shows it was presented to T on 30 November 2021 – this is printed on the back of the cheque. The cheque was then paid on 1 December 2021. Given this, it seems unlikely that Nationwide would have had time to cancel the cheque when Mr L called it on 30 November 2021. So, while I appreciate Nationwide gave Mr L incorrect information on the phone call, I'm not persuaded the fraud could have been prevented had the correct information been given.

So, to summarise this aspect of the complaint, I'm satisfied Nationwide wasn't responsible for Mr L's loss in the first instance and had T not been able to ringfence the money, Nationwide wouldn't have been liable to refund Mr L the money out of its own pocket. Moving on though, I've also looked at what happened after it became apparent that Mr L hadn't received the cheque and whether Nationwide could have done anything differently.

I understand Nationwide isn't responsible for the fraud and as explained, I wouldn't have expected it to refund Mr L the money itself when he reported what happened. However, I'm not satisfied it did enough to help Mr L once it became clear he hadn't received his money. It would only have taken one phone call or email to T in December 2021 for it to become apparent that luckily, most of Mr L's money was safe and waiting to be claimed via an indemnity. This would have been the reasonable action for Nationwide to take to help its customer. As it was, it took our service intervening and contacting T for Nationwide to raise the indemnity. Because of this, I think it's fair to say Nationwide caused a delay in Mr L receiving the £39,195.18 back from T and he has therefore lost the use of these funds in this time. Nationwide should therefore pay 8% on this amount.

I will explain when this should be paid from now. Mr L called to query the cheque on 30 November 2021. Had he been correctly advised at that point; I would have expected to see Nationwide take some action then, as Mr L was saying he hadn't received the cheque. It's fair to allow a week for a trace to be done and contact made with T to clarify what had happened at its end – this would take us to 7 December 2021. Had this been done, it seems likely T would have confirmed it had blocked the account for suspected application fraud and most of the money remained to be indemnified. The indemnity could then have been submitted. It took T 30 days to return the money once the indemnity was raised in January 2023, so it's fair an allowance is made for this time as this was out of Nationwide's control. With all this in mind, the starting point for the 8% should be 6 January 2022. It should then be paid up to 27 February 2023 when Mr L received his money.

I won't be recommending Nationwide pay any further compensation to Mr L beyond the 8% simple interest as I'm satisfied it refunding the shortfall amount of £1,487.82 is sufficient in this case."

Nationwide responded accepting the provisional decision and provided a figure for the interest payment, minus income tax.

Mr L responded letting me know that whilst he is comfortable with the settlement, he isn't a UK taxpayer and therefore requested for me to ask Nationwide to pay the interest to him without deducting the income tax. He explained that he didn't pay tax on his Individual Savings Account (ISA) and so does not see a reason Nationwide should withhold the tax. He doesn't want the hassle of having to apply for a tax refund due to Nationwide's mistake.

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.

It remains, that whilst not responsible for the fraud that happened to Mr L, Nationwide could have helped him retrieve his money earlier than it did. Both Mr L and Nationwide agree with my provisional decision to this effect, so I see no reason to depart from it.

The only remaining issue is the fact Mr L is unhappy Nationwide has indicated it will be deducting income tax from the interest payment. The 8% simple interest payment is to take into account Mr L was without the funds he had withdrawn from his ISA, so the fact he didn't pay interest on his ISA isn't relevant here. And whilst I appreciate Mr L's comments, the tax deduction isn't something I'm able to ask Nationwide to set aside, as it has its own obligations to follow when it comes to tax. If Mr L is not a taxpayer, he will be able to reclaim the tax from HM Revenue and Customs.

Putting things right

- Pay 8% simple interest on the £39,195.18 from 6 January 2022 to 27 February 2023. If Nationwide considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold Mr L's complaint against Nationwide Building Society and direct it to carry out the settlement detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 August 2023.

Sarah Brimacombe
Ombudsman