

The complaint

Ms N complains that Nationwide Building Society won't refund the money she lost when she was the victim of what she feels was a scam.

What happened

In early 2023, Ms N was looking to borrow some money to help with her financial circumstances and mentioned to someone she knew that she was speaking to her bank about a loan. The person she spoke to then told her they may be able to help her, as they ran a lending company. They said a loan they were setting up for a client had just fallen through, so they could lend Ms N that money instead if she paid the charge. Ms N then sent a number of payments from her Nationwide account to the person to pay the charge for the loan.

Unfortunately, the person never loaned Ms N the money they had agreed or returned the money she had paid for the charge. Ms N then reported the payments she had made to Nationwide as a scam and asked it to refund the money she had lost.

Nationwide investigated but said, based on the information it had, it hadn't found evidence of fraud and didn't think this was a scam. So it didn't agree to refund the payments Ms N had made. Ms N wasn't satisfied with Nationwide's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the evidence suggested the person had intended to defraud or scam Ms N. So they thought this should be treated as a civil dispute, rather than a scam, and that Nationwide wasn't responsible for refunding the payments. Ms N disagreed with our investigator, so the complaint has been passed to me.

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 don't think it would be fair to require Nationwide to refund the payments Ms N made. I'll explain why below.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Nationwide is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers

are only covered by the code where they have been the victim of a scam – as defined in the code.

The CRM code defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Nationwide should refund the money Ms N lost under the CRM code, I need to consider whether she has been the victim of a scam – or, in other words, whether she was deceived about the purpose of the payments to the point where she and the person she sent the payments to intended different purposes for the payments and the person set out from the beginning with the intent to defraud her.

I've thought very carefully about this, and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Ms N has said she had known the person she made the payments to for a number of years before she made the payments, as they were a regular customer where she worked. But this isn't how I would expect a scammer to contact potential victims, and I wouldn't expect a scammer to have a personal relationship with a potential victim for so long before a potential scam either.

The company the person said they ran had been listed on the government register of limited companies for several years before the payments Ms N made, with the person's correct name listed as a director. But I wouldn't necessarily expect this of a company operating a scam.

Ms N was given a formal loan agreement document, which was signed by the person she made the payments to on behalf of their company. And I also wouldn't expect a company operating a scam to provide this kind of documentation.

The bank the payments were sent to also told Nationwide it had contacted the account holder, didn't have any concerns about the account at the time, and felt this was likely a civil dispute. And from what I've seen of the account the payments were sent to, I don't think there was anything particularly concerning about the activity on it at the time or that the way it was run suggests it was being used to operate a scam.

I appreciate that neither the person or their company ever loaned Ms N the money agreed or returned the money she had paid for the charge. But this, by itself, does not mean she has been the victim of a scam as people and companies can fail to carry out their contractual obligations for a number of reasons.

Some of the evidence Ms N has provided could suggest the person was operating a scam. But, based on the evidence I've seen, I think it's more likely the person here was attempting to operate as a legitimate business at the time and intended to provide the loan, but that other factors ultimately meant the loan wasn't provided.

I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud. I don't think the evidence I've seen suggests the person Ms N paid

deceived her about the purposes of the payments or set out from the beginning with the intent to defraud her. I think both Ms N and the person's intentions for the payments were the same – to pay the charge for a loan. So I don't think the circumstances here meet the definition of a scam from the CRM code.

And so I don't think the payments Ms N made to the person are covered under the CRM code, or that Nationwide should be required to refund the payments she made.

I sympathise with the position Ms N has found herself in, and I'm in no way saying she did anything wrong or that he doesn't have a legitimate grievance against the person she sent the money to. But I can only look at Nationwide's responsibilities here and, for the reasons I've explained above, I don't think it would be fair to hold Nationwide responsible for the money she lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 25 July 2024.

Alan Millward
Ombudsman