

The complaint

Miss G complains that Nationwide Building Society haven't treated her fairly in relation to a loan application and payments made from her account.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In November 2022 Nationwide processed a loan application in Miss G's name. The loan was for £25,000 with a repayment term of 36 months. On 25 November 2022 the loan funds were paid into Miss G's Nationwide account. From there they were sent to another account she held with 'R' before again being sent on to a cryptocurrency exchange.

Nationwide's notes record that Miss G contacted them and initially said that she'd been forced into taking out the Nationwide loan (and others) and to move the funds on by someone who was threatening her. And that she later said she'd been the victim of a cryptocurrency investment scam and had no prior knowledge of the loans or how the funds were moved on.

Nationwide investigated and said that they wouldn't be treating this as a fraudulent loan application. They pointed out that the loan was applied for from a computer Miss G had previously used to access her online banking. And that their system can detect when remote access software was being used, which wasn't the case here. They also said that the payments that moved the loan funds on to R were all done from Miss G's phone, which wouldn't have been possible for a third party to do remotely. Nationwide also highlighted that Miss G's testimony about what happened had changed. They also said they'd done sufficient checks before issuing the loan, but they agreed to remove any interest from it as a gesture of goodwill.

Miss G referred her complaint to our service. One of our Investigators considered the complaint and didn't recommend it should be upheld. She didn't think Nationwide had treated Miss G unfairly. Miss G disagreed and asked for an Ombudsman to review her complaint. In February 2024 I issued a provisional decision in which I said:

"I'm considering multiple other complaints that Miss G has with our service about other financial businesses involved in the wider circumstances. And I'm also aware of a different complaint (also about Nationwide) that is being considered separately by our service. The other complaint is about Miss G being unhappy with Nationwide in relation to how long her account remained blocked and alleging her accounts had been closed..."

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Miss G hasn't been able to provide a great deal in terms of documentary evidence of what she said happened between her and the scammer. She says this is in part because the

scammer used messages that delete themselves after a period of time and also because she was advised to wipe her phone as a security precaution when the scam was discovered. In light of this Miss G's testimony is an important factor in the consideration of this complaint.

Broadly speaking Miss G's testimony to our Investigator was as follows. She responded to an advert on social media and was contacted and talked through the process of investing which involved downloading screen sharing / remote access software on both her computer and phone. After her initial investments showed good returns, she wanted to withdraw her money. She says at this point the scammers were pressuring her to put more money in and asked her to take a loan to invest more. When she declined to do this, she says the scammer told her he had already taken four loans in her name, which had been used to purchase cryptocurrency that he was now trading for her. Miss G says she didn't move any of the loan funds on and that this was all done by the scammer, presumably through the screen sharing / remote access software.

Miss G says the scammer told her that he needed her help to "push through" a further loan and that those funds would then mean that all her profits could be released. Miss G says she contacted a lender and chased up the loan as requested. The loan funds were then moved through Miss G's accounts before being used to purchase cryptocurrency which she says was then lost to the scammer.

I don't find Miss G's testimony evidence to be credible or reliable. I say this for a number of reasons. Miss G says she had no involvement in or knowledge of the loans in her name until the scammer shared this with her on 25 November 2022. But part of the evidence provided by Nationwide shows that on 23 November 2022 Miss G's mobile banking was logged into using a fingerprint and that her full statements were viewed. At this point two loans she disputes taking would have been visible on the statements as well as the outgoing payments that moved the funds on. The use of a fingerprint to log in would have required physical possession of her phone and isn't something I think likely could have been done remotely as Miss G alleges. And given I'm persuaded that, on balance, it was Miss G on that login, and the evidence provided shows that the statements were viewed, I think if she really had no knowledge of or involvement in those transactions and loans as she now states, she would have disputed this at the time.

Further to this there was another login on 24 November 2022 (again using a fingerprint to access the app). And during that session an outgoing payment for £10,000 was made which is one of the ones Miss G says she knows nothing about. Again, I'm more persuaded by the technical evidence and think Miss G instructed that payment. There are other instances of logins to mobile and online banking but I won't list them all.

Some of the information from the other lenders also includes that they sent information such as welcome packs etc to Miss G (using the same email address she has used to communicate with our service). Some of these were sent before Miss G says she knew of the loans. Again if Miss G hadn't had involvement in those loans, it's difficult to understand why they weren't disputed when she received information about them.

Further to this, as Nationwide have pointed out, Miss G's testimony has changed over time. Initially alleging that she was forced to take and then move the loans, before later claiming that she largely had no involvement in this at all.

The net result of all of this is that I think Miss G knows more about what went on than she has shared with our service. I find the evidence compelling that Miss G would have known about some of the loans sooner than she says she did. And I'm not persuaded the movement of those funds were unauthorised as she's alleged.

For clarity, I'm more persuaded by the technical evidence from Nationwide than by what Miss G has said. And I think it's more likely than not that she both agreed to take the loan with Nationwide and authorised the payments that left her account. I've next gone on to consider whether Nationwide ought to have done more in relation to any of those authorised payments. But here, the payments went to Miss G's own account with R. This was a long standing and established payee that Miss G had paid numerous times before over a period of years. And so whilst the movement of funds from the Nationwide account to the account with R was significant, in the context of the link between the accounts, in this case, I'm not persuaded that Nationwide needed to do more than they did prior to processing each payment.

Miss G has also alleged that the lending was unaffordable for her. The monthly repayments for this loan were due to be around £810 over a 36-month term. Repayments of this amount and for the term involved represent a significant financial commitment. And Nationwide fairly and reasonably ought to have conducted reasonable and proportionate checks to ensure the loan was affordable for Miss G in a sustainable way.

Nationwide as well as being the lender also provided a current account to Miss G. And as such Nationwide would have had access to Miss G's accounts and spending history. I think part of those checks should have involved looking at the available information to gain a better understanding of Miss G's ability to repay the loan. And at the point at which this loan was agreed, two of the other loans (each also for £25,000) had credited and been paid away from the account in the preceding days. So whilst those loans likely wouldn't have yet shown on Miss G's credit file, this was significant information that I think should have impacted Nationwide's decision to lend. Nationwide had information to suggest that it was the third lender from whom Miss G was seeking to borrow a significant amount. And I don't think a closer look at Miss G's financial situation would have supported that she could have maintained three such loans in a sustainable way.

But just because I'm not supportive of Nationwide's lending decision, this doesn't mean it would be fair and reasonable for the loan to be written off. Nationwide have already said that they won't apply interest to the loan, which is part of what I'd direct them to do in these circumstances. And the only further thing I think they need to do is, upon repayment of the loan, to remove any adverse information that they've reported about Miss G's loan to the credit reference agencies. Nationwide will still need to treat Miss G positively and sympathetically in relation to the outstanding debt.

My provisional decision

For the reasons outlined above, but subject to any further information I receive from either Miss G or Nationwide Building Society, I intend to uphold this complaint in part. I intend to direct Nationwide Building Society to (upon the loan being repaid) remove any adverse information they've reported to credit reference agencies in relation to the £25,000 loan issued in November 2022."

Nationwide responded and said they had nothing further to add. Miss G responded with some further comments that I'll address below.

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.

Miss G has argued that the loan isn't recoverable because she says there is no legal contract, it is unaffordable and therefore void. She's made some legal arguments as to why

this is the case which include *“lack of consent, impossibility of performance and illegal consideration.”*

The crux of Miss G’s argument is still largely coming from her position that she didn’t enter into the agreement, and my on-balance finding is that Nationwide concluding that she did, is fair. So I don’t agree that this means Nationwide can’t pursue the outstanding debt or that the agreement is invalidated.

Miss G has also re-iterated her position regarding the affordability of the loan, she’s also said she wants to know how I’ve concluded this loan was affordable for her. For clarity, as I’ve stated above, I’ve not found that Nationwide ought to have agreed the loan for the reasons I’ve set out. It appears Miss G has submitted the same response for this complaint as for some of the other complaints I’ve considered where I’ve supported those lender’s decisions.

Miss G also said that I haven’t addressed her point about the payments from the account being unusual and that she thinks Nationwide ought to have intervened at the time. I don’t agree that is the case. To quote from my provisional decision above I said: *“And so whilst the movement of funds from the Nationwide account to the account with R was significant, in the context of the link between the accounts, in this case, I’m not persuaded that Nationwide needed to do more than they did prior to processing each payment.”*

I’ve considered everything Miss G has said, but nothing has persuaded me to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint in part.

Nationwide Building Society (upon the loan being repaid) must remove any adverse information they’ve reported to credit reference agencies in relation to the £25,000 loan issued in November 2022.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss G to accept or reject my decision before 23 April 2024.

Richard Annandale
Ombudsman