

## **complaint**

Mr and Mrs D complain that Nationwide Building Society wrongly allowed a cheque payable to them to be paid into one of its accounts, leading to a substantial loss.

## **background**

I recently issued my provisional conclusions setting out the events leading up to this complaint, and why I was minded to uphold the complaint. I've attached a copy of my provisional decision, which forms part of this final decision. I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

### *response to my provisional findings*

Mr and Mrs D responded to my provisional findings, noting that Nationwide's investigation had said the account address was known as fraudulent.

Nationwide also replied. It said it took its identification obligations extremely seriously. It acknowledged that the account hadn't, in fact, been subject to the credit checks it had originally suggested. But the society said the fraudulent address wasn't something known to the branch when it opened the account. And while it didn't keep copies of identification documents, it would have verified them face to face with the people opening the account. According to its records, the identification in question comprised an overseas immigration document for Mr D, and a overseas national identity card for Mrs D.

Nationwide also said that it had a process for referring high-risk applications to a specialist team for vetting. That process hadn't been used for the application in this case, as the society didn't consider it high risk.

## **my findings**

Having received a response from both parties, I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've thought carefully about Nationwide's comments in response to my provisional decision. I accept what it's said about the branch's knowledge at the time. Indeed, I'd express some surprise if the branch had known this but proceeded to open the account anyway. Having considered what Nationwide's said overall, though, I don't think what the society's said supports the position it's taken.

Even the limited information about what Nationwide knew at the time it opened the account suggests to me that if there were reasons for it to be suspicious. The identification documents, apparently issued by countries on different continents, bore the same issue date. And the society determined the application wasn't high risk, despite saying that it matched a false identity fraud CIFAS warning. Its reason for doing so – that the account was being opened jointly – doesn't strike me as particularly persuasive evidence that it took an appropriate level of care.

Those matters, combined with what I said in my provisional decision, don't suggest to me that I could properly reach a conclusion that Nationwide acted without negligence in the course of collecting Mr and Mrs D's cheque on behalf of someone else. It follows that I'm not minded to change the outcome I proposed in my provisional decision.

### **my final decision**

For the reasons set out here and in my provisional decision, I've decided to uphold Mr and Mrs D's complaint. To settle it, I require Nationwide Building Society to take the following steps within 28 days of receiving Mr and Mrs D's acceptance of this decision:

1. pay Mr and Mrs D £27,000 in respect of their loss, representing the cheque funds.
2. pay interest on this amount from the date the cheque was accepted for deposit until the date it refunds the money. Interest should be calculated at an annual rate of 8% simple. If Nationwide deducts tax from the interest element of my award, it should provide Mr and Mrs D with tax deduction certificates.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 15 January 2018.

Niall F Taylor  
**ombudsman**

## **complaint**

Mr and Mrs D complain that Nationwide Building Society wrongly allowed a cheque payable to them to be paid into one of its accounts, leading to a substantial loss.

## **background**

Mr and Mrs D were supposed to receive a cheque from E. But it was intercepted by F, a third party. F opened a Nationwide current account in Mr and Mrs D's names and, a few days later, deposited the cheque to the account. Over the following week, F withdrew the money.

When Mr and Mrs D found out their cheque had been banked through Nationwide, they complained to it. They felt the building society's actions had caused them to lose their money. Nationwide said it wasn't responsible. It had accepted the cheque in good faith, and paid it into an account bearing the payee name. Nationwide told Mr and Mrs D they'd need to contact E for reimbursement.

Mr and Mrs D weren't happy with Nationwide's response. They brought their complaint to us, and it was reviewed by our adjudicator. The adjudicator accepted Nationwide had acted in good faith, and that it had no reasons for concern when the cheque was paid in. She didn't think Nationwide needed to do anything to resolve matters. But Mr and Mrs D didn't agree. They've asked for this review.

## **my provisional findings**

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, as I've said, I'm currently minded to reach a different outcome. I intend to uphold Mr and Mrs D's complaint. I'll explain why.

It appears to be accepted that Mr and Mrs D were the true owners of the cheque in question, and that they've been the victims of fraud. Their position is that in collecting the cheque on behalf of someone else (F), Nationwide wrongly interfered with their property, more commonly referred to as cheque conversion. In law, conversion is a tort of strict liability; that is to say, anyone who performs an act inconsistent with the rights of the owner, however innocent he may be, is liable for the loss caused.

But the law also offers a potential defence to banks and building societies against actions in cheque conversion, by means of Section 4 of the Cheques Act 1957. That says that, where a bank or building society collects a cheque for a customer who isn't the true owner (as here), it's not liable provided it has acted in good faith and without negligence. In relying on such a defence, it's for Nationwide to demonstrate that it has met these requirements. It's not for Mr and Mrs D to demonstrate Nationwide didn't do so.

We set out our approach to complaints involving cheque conversion in the technical notes section of our website<sup>1</sup> and in the March 2003 edition<sup>2</sup> of Ombudsman News. That long-standing approach has been to take into account the circumstances in which the cheque was collected. It's long been the case that fraudsters who've intercepted cheques often open accounts using forged identification to match the cheque details. So where a cheque's been paid into a recently opened account, we'll also look at the account-opening arrangements in the course of considering whether the bank or building society has acted in good faith and without negligence.

I'm minded to accept Nationwide's argument that it acted in good faith. I've no reason to think otherwise. But did it act without negligence? In my view, that position's rather less clear. There are certain aspects of F's activity that bear some of the hallmarks of cheque conversion fraud, and which Nationwide might've noticed. But perhaps more importantly, I think I'd at least need to see the documents F provided to Nationwide, or the checks it made to verify that F was who he said he was.

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<sup>1</sup> [http://www.financial-ombudsman.org.uk/PUBLICATIONS/technical\\_notes/disputed-transactions.htm](http://www.financial-ombudsman.org.uk/PUBLICATIONS/technical_notes/disputed-transactions.htm)

<sup>2</sup> <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/26/cheque-lost-in-post-26.htm>

That would help to assess whether there was anything about the documents or checks that might've prompted Nationwide to question things, or indeed, to reassure it.

Unfortunately, Nationwide's told us it doesn't have copies of the documents. It simply says identification was provided, but not stored. It adds that the [party opening the] account would've passed credit checks before it was opened. I'm unable to verify this. Nationwide hasn't provided details of the check it carried out on the details it was given. Further, having carried out a check of the edited electoral roll and other credit information agencies, I've been unable to find any such record relating to the given account address.

In the absence of suitable supporting evidence, I'm not currently persuaded to find that Nationwide's done enough to demonstrate it acted without negligence when collecting the cheque. Because of this, I can't fairly say it's entitled to rely on the defence afforded under section 4. Nationwide therefore has a liability to Mr and Mrs D for the money they've lost, dating from the point at which it received and collected their cheque for someone else.

I've thought about whether there's any reason why this might not be a fair and reasonable way to resolve this complaint. But other than it leaving Nationwide out of pocket, rather than Mr and Mrs D, I haven't found one.

I'm also conscious that Mr and Mrs D have been without the use of quite a substantial sum throughout this period. I appreciate that it might be argued this was because F had stolen the cheque. However, I don't think that would be the correct analysis. In my view, it's because of Nationwide's actions in collecting the cheque, and then failing to reimburse Mr and Mrs D at an earlier stage.

With this in mind, I propose to order Nationwide to reimburse Mr and Mrs D the full value of the cheque, together with interest for the period they've been without use of the money, as set out below.

#### **my provisional decision**

Subject to any further comments and evidence I receive from either party by 31 October 2017, I intend to uphold Mr and Mrs D's complaint and require Nationwide Building Society to take the following steps:

3. pay Mr and Mrs D £27,000 in respect of their loss, representing the cheque funds.
4. pay interest on this amount from the date the cheque was accepted for deposit until the date it refunds the money. Interest should be calculated at an annual rate of 8% simple. If Nationwide deducts tax from the interest element of my award, it should provide Mr and Mrs D with tax deduction certificates.

Niall F Taylor  
**ombudsman**