

## **complaint**

Mr R is the executor of the late Mr K's estate. Mr R complains that Nationwide Building Society wrongly collected a cheque for an unknown third party that was intended for Mr K.

## **background**

In August 2007, a Nationwide account was opened in Mr K's name. A month later, a cheque was deposited to the account. The cheque had been issued in June. Following clearance, the money was taken out in a series of daily cash machine withdrawals.

Mr K died in October 2007. His relatives discovered the account and raised a concern with Mr R, in his capacity as executor. Mr R asked Nationwide to look into what had happened. Nationwide provided a copy of the cheque. It suggested the matter should be taken up with the bank on whom the cheque was drawn. That didn't resolve the concern, which Mr R has now referred to us.

Our adjudicator didn't think there was anything unusual about the cheque deposit that might have aroused Nationwide's suspicion. She noted some time had passed between the account opening and the cheque deposit. So she didn't recommend upholding the complaint. Mr R asked for this review, querying whether Nationwide acted reasonably in allowing the cheque deposit. Mr R said Mr K's identity and property were stolen using Nationwide's systems. He asked what identification steps Nationwide took when opening the account.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there's a dispute about what happened, I've based my decision on what I consider most likely in the light of the evidence.

It isn't entirely clear that Mr K was a victim of fraud. The matter didn't come to light until after he died, when his relatives received a Nationwide statement. The account was opened at a different address. That was changed to Mr K's own address before the first withdrawal.

On the other hand, Mr K's relatives say he was away from home over the period the cheque was issued. They add Mr K's limited mobility meant he was unlikely to have been able to make daily cash withdrawals from a number of different machines. On balance, I am prepared to accept it's more likely than not the cheque was intercepted by a third party who then opened an account in Mr K's name.

Both parties agree the cheque belonged to Mr K. It was made out in his name and was sent to him. It seems to have been intercepted, either in transit or by someone who had access to the shared mailbox at his property. Nationwide interfered with Mr K's right to the cheque, by collecting it and paying it into somebody else's account. That's known as 'conversion'. And the general law of conversion doesn't allow Nationwide to interfere with Mr K's property.

But the general law is modified by section 4 of the Cheques Act 1957. That says if a banker collects a cheque in good faith and without negligence then he isn't liable to the true owner for any loss. I've not seen anything to suggest Nationwide wasn't acting in good faith. So what I have to determine is whether Nationwide acted without negligence in collecting the cheque.

I can see why Mr R has questioned the steps taken by Nationwide in opening the account. Presumably, whatever identification was provided was not genuine. But that doesn't

automatically mean Nationwide was negligent in accepting it. I could only reasonably say this if I thought there was something about that identification that should have made Nationwide suspicious.

Unfortunately, it isn't been possible for me to determine this point. Nationwide doesn't have copies of identification documents for me to examine. It doesn't look like copies were taken when the account was opened. I don't draw an adverse inference from this. If copies had been taken, they could just as easily have demonstrated the documents appeared genuine.

Like the adjudicator, I think the delay between the account opening and the cheque deposit is relevant to whether Nationwide might have had misgivings. As Mr R has acknowledged, the cheque was likely to have been accepted for deposit without concern. There was nothing about the transaction itself to arouse suspicion. That might have been different if the account had been opened more recently; say, at the time of the deposit, or within a couple of days. But I can't properly say Nationwide was negligent simply because it accepted a cheque that hadn't been deposited at the time the account was opened.

I am satisfied Nationwide is entitled to rely on the protection given to it by section 4 of the Cheques Act. Because of this, although I'm sympathetic to the fact Mr K was a victim of fraud, I don't believe there are any grounds on which I could properly uphold the complaint.

#### **my final decision**

My final decision is that I am unable to uphold this complaint.

Niall Taylor  
**ombudsman**