

complaint

Mr M is unhappy Nationwide won't refund the money he lost as the result of a scam.

background

Mr M is a vulnerable adult. He suffers from mental health illnesses that, in the words of his psychiatrist, are "complex and enduring". These mental health illnesses have an impact on his decision-making abilities and make him vulnerable to manipulation. There is nothing in his records to suggest he lacks the capacity to manage his finances, or make significant financial decisions, but he does have help when filling in forms or responding to correspondence. Mr M is being represented in this complaint by a specialist organisation that supports him, who I will refer to as Company I.

In November 2018 Mr M was contacted by somebody claiming to work for a company that operates a Foreign Exchange (Forex) trading platform and offered Mr M the opportunity to trade in cryptocurrency. Mr M was told he'd make good returns on his money. This person (who I shall refer to as T) recommended Mr M take out a personal loan and credit card to fund the cryptocurrency purchases.

Mr M says T asked him to share his laptop screen and proceeded to help him apply for a £5,000 loan on 12 November 2018. Mr M says T told him to say the purpose of the loan was to buy a car. The loan was provisionally accepted on the basis Mr M could prove his earnings. Mr M also applied for a credit card later that day, but this was declined.

The following day on 13 November 2018, Mr M attended branch to discuss the loan application. It was established his earnings were slightly less than what was put on the loan application, but Nationwide deemed the loan affordable and it was successfully processed and the £5,000 deposited into Mr T's account that day.

Later that day Mr M attempted a card payment of £4,273.27 to EU Pay Limited for what he thought was him buying cryptocurrency to trade with. Nationwide blocked this payment and spoke to Mr M on the phone.

The advisor asked Mr M what the payment was for and he told her he was buying a car and the seller wanted payment in cryptocurrency – which is why he was purchasing the cryptocurrency. Mr M told the advisor he'd seen a photo of the car and spoken to the seller and was able to tell the advisor what type of car it was. The advisor asked if he had any paperwork and he told her he didn't, nor could he remember what website he'd seen the car on when asked. The advisor proceeded to tell Mr M that this was a very unusual way to buy a car and that she believed it was likely a scam. She emphasised this several times throughout the call. Mr M told the advisor he wouldn't release the cryptocurrency until he had the car – he told the advisor he was in the same city that the car was being sold from and that he'd made purchases from this cryptocurrency company before.

The advisor told Mr M she wouldn't recommend making the payment, but it was his choice if he wanted to proceed. She explained that if he didn't receive the car, it wouldn't be able to claw back the money. Mr M said he understood, and a scam declaration was read to him. The declaration included the following:

"...Payments for an investment as a result of a cold call or to help an acquaintance due to an extreme personal circumstance are also often signs of a scam and lead to an

unrecoverable loss of your money. Fraudsters will often ask you to hide reason for payment to reduce the risk of detection when questioned by your bank “

Following this the block was lifted. The following day on 14 November 2018, Mr M made two card payments. The first was made in Euros and totalled £874.29 and the second, to a different merchant, was made in dollars and totalled £3,321.07. Both of these transactions debited successfully.

The following day Mr M wanted to begin trading and so was directed by T to log into his trading account. The account appeared blocked and when Mr M asked T why this was he was told he had to provide ID. He did this but the account still appeared blocked and T told him his ID (a bus pass) wasn't acceptable. Mr M told T he wanted his money back as he couldn't access his trading account. However, T stopped responding to Mr M. After further attempted contact with the company, Mr M received an email to say his ID documents had been received and his account activated. However, when Mr M asked for his money back again, his requests went unanswered.

Following this Mr M notified Nationwide of the situation with the help of Company I. Company I sent Nationwide evidence of Mr M's mental health condition, explaining that he'd been admitted to hospital as a result of the scam. It also supplied screenshots of the email communication between him and T, showing Mr M asking to withdraw his funds.

Nationwide requested Mr M provide it with more information before it could raise a chargeback for the two card payments. Company I responded to Nationwide letting it know Mr M didn't have any more information than what he had already supplied and requested details for the Financial Ombudsman Service so Mr M could raise a complaint.

Nationwide issued its final response explaining that it could not raise a chargeback without the further evidence. It didn't think Mr M had followed the correct procedure for withdrawing his funds from the trading platform and he would need to contact the merchant directly to do this. It also directed Mr M to contact the police about the fact he was forced into applying for the loan and credit card.

Mr M referred his complaint to our service. Our investigator upheld the complaint. He was of the opinion Nationwide shouldn't have lent to Mr M, pointing out that he'd put contradictory and misleading information about his employment status and income across the credit card and loan applications. Therefore, he felt Nationwide should've been on notice something wasn't quite right and asked Mr M more questions before proceeding with the loan. He was satisfied that if it had done this, the scam would've come to light and been prevented. He also felt Nationwide should've attempted a chargeback and this would likely have been successful given the evidence that Mr M was dealing with a scam company.

Nationwide disagreed. It didn't feel it had lent irresponsibly to Mr M, pointing out that it had done the required checks prior to the loan being granted – it wasn't to know he was being dishonest with regard to the loan purpose and the information it did have didn't raise any alarms. It doesn't believe it could've done anymore to prevent the loan being taken or the subsequent repayments, pointing to the conversation it had with Mr M after he attempted the first card payment. Nationwide also suggested that it doesn't know Mr M wouldn't be able to benefit from the investment as he hadn't followed the correct procedure for withdrawing his funds.

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

My provisional findings

After considering all the evidence, I issued a provisional decision on this complaint on 1 March 2021. I provide a copy of my findings from that decision below:

“Loan application

Our investigator was of the opinion Nationwide shouldn't have lent to Mr M. However, I disagree with this.

Mr M began his loan application online, requesting a quick quote for a £5,000 repayable over 12 months. The application stated his earnings were £1,500, his occupation was set to part time and the reason for the loan was to buy a car. The monthly payments were due to be £428.88. The application proceeded and was conditionally approved.

Nationwide assessed Mr M's income by reviewing his account statements and established that he was receiving closer to £1,150 a month income through benefits. The notes provided by Nationwide suggest Mr M was contacted and asked if he'd like to reprocess the loan at the lower income or provide evidence that he was in receipt of £1,500.

It would appear this contact prompted Mr M to attend branch to complete his application, where it was processed on the basis his income was £1,150 a month. The loan term was extended to take the monthly payments down to £95.20 a month.

Nationwide has evidenced that it checked Mr M's income figure prior to agreeing to the loan and correctly contacted him to confirm this. It's explained that his benefits were an acceptable source of income - and I should stress that just because someone's only income is through benefits; doesn't mean they should be refused credit. A loan can still be affordable in these circumstances. It's not entirely clear why the loan term was increased as both parties have given differing statements – Mr M says the advisor recommended this, but Nationwide say this wouldn't have been the case as the loan application wasn't an advised sale. But regardless, lengthening the loan term made the monthly payments manageable for Mr M when compared to his outgoings.

Mr M told Nationwide his loan was for a car and I wouldn't have expected it to question this based on the information it had at the time. I acknowledge that Mr M's earnings were inflated slightly on the loan application, but I don't think this was to the extent that it would've caused Nationwide to be on notice that something was amiss with the application, nor the fact he'd put the incorrect employment status. And whilst Nationwide is now aware that Mr M is a vulnerable adult, it wasn't at the time of the application. So, I can't fairly say it should've done anything differently when the application was made.

Taking everything into consideration, I've seen nothing to suggest the loan was unaffordable for Mr M or lent irresponsibly by Nationwide. Nor can I say it could've done anything more to detect Mr M was being scammed at that point.

Card transactions

It's common ground that Mr M authorised the two card payments in November 2018. And I'm satisfied he fell victim to a scam. Nationwide doesn't appear to have been convinced of this throughout the course of this complaint, explaining that Mr M never asked for his withdrawals

in the correct way and this could explain why he wasn't able to get his money back.

However, I think there is sufficient evidence that Mr M was dealing with a scammer. It would be highly unusual for a genuine investment firm to instruct their customers to take out credit to then use to invest. And even more unusual that the advisor would take remote access of someone's computer to 'help' them with the applications. In addition, Mr M has provided an email from the company dated 29 November 2018 where they say they have received Mr M's ID documents and activated his account. He then asks for his money to be released and they said someone would be in contact to arrange this. Mr M was then unable to get any further communication from the company. Again, not something you'd expect from a genuine investment company. Finally, the regulator has confirmed the company is unregulated and the warning suggests companies such as these are known to run investment scams. So, when considered altogether, I'm satisfied Mr M is the victim of a scam.

I accept that these were 'authorised payments' even though Mr M was the victim of a sophisticated scam. He used his card details to make the payments. So, although he was tricked into doing so, under the Payment Services Regulations 2017, Mr M is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Nationwide should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

I'm satisfied there were fraud triggers in this case because Nationwide's staff did in fact intervene. Prior to the two disputed card payments leaving his account, Mr M attempted one for £4,273.27 to EU Pay Limited. This transaction was blocked by Nationwide and a phone call then took place. Given the information Mr M gave the advisor in the call, she clearly had strong suspicions Mr M was currently in the process of being scammed. She told him as much, but Mr M was adamant he wanted to proceed, despite the advisor warning him that his money would be lost if it later turned out to be a scam.

I think it's important to note at this point Mr M wasn't deliberately deceiving Nationwide when he spoke to them. He is a vulnerable individual who had fallen victim to a very elaborate and convincing scam – he was completely taken in by T and was just following instructions given to him. Based on what Mr M's doctors have said, I think it's fair to say he didn't comprehend what was happening to him. This is the case with the majority of scam victims of course, but in Mr M's case, this is heightened by his condition.

I don't dispute that the Nationwide advisor tried her best to explain to Mr M that the payment was most likely a scam. At that point the transaction Mr M had made had been blocked from

debiting, so Nationwide didn't have to take any further action in regard to that. But I'm of the opinion that Nationwide then missed an opportunity to prevent the subsequent payments.

I recognise there is a balance to be struck between a bank preventing fraud and following a customers' instructions. But in a case such as this, where Nationwide was presented with a situation where it was convinced its customer was being scammed, I think additional steps should've been taken with regard to Mr M's account.

The day after this conversation, Mr M processed a further two card payments. Both of these were in a foreign currency and followed the same vein as the one blocked the day before. You could argue they were unusual themselves, but when coupled with what happened the day before, I think Nationwide should've been on high alert that Mr M was at risk of fraud and financial harm and taken steps to ensure the payments didn't debit the account. For me the key factor here is that despite what Mr M told the advisor on the phone, she clearly wasn't convinced it was a legitimate payment by the end of that call. So, at that point Nationwide were on notice Mr M was at risk.

Had Nationwide blocked the £874.29 it could've had a further call with Mr M. It seems likely he would've given the same story as the day before, so at this point, I would've expected Nationwide to do something further. He'd changed merchants and amounts by this point and so his story would likely have been even more out of the ordinary.

Nationwide has a duty to protect its customers and so I think it could've taken some more robust actions to prevent what it strongly believed was a scam. At the very least the payments shouldn't have been processed. But I also think that part of its duty to protect against scams, is to ensure its customers don't continue to fall victim to it.

So, in this situation it wouldn't be enough to just keep blocking the payments. Instead, it could've requested Mr M attend branch, so the staff there could've had a face to face conversation with him and asked him to bring with him any information he had on the car sale. We know he didn't have this as he'd been given a cover story. So, it seems likely that a more tailored and probing face to face conversation could've broken down his story and uncovered the real scam. This is especially the case when you consider Mr M's vulnerabilities, as it doesn't seem likely he would've been able to keep up with the story under more pointed questioning or elaborated further without the help of the scammer.

Nationwide could've then taken steps to educate Mr M on investment scams and let him know a genuine company wouldn't give him a cover story or ask him to apply for a loan. In addition, there was already a warning against this company on the regulator's website by this point.

So, overall, I'm persuaded that Nationwide could've and should've prevented the card payments debiting Mr M's account and done more to break the spell the scammer had over him.

I've also considered whether Mr M should bear some responsibility by way of contributory negligence. However, it is clear that up to and including the time of authorising the payment, he was still totally in the dark and simply did not appreciate what he was doing or the consequences of his actions. His vulnerabilities led him to trust T and the information he was feeding him. I'm therefore satisfied there was no contributory negligence on this occasion, he was simply the unwitting and blameless victim of a clever fraudster. Nationwide was the professional in financial matters; Mr M was a vulnerable layperson.

In the circumstances I'm satisfied Nationwide should fairly and reasonably reimburse Mr M for both payments totalling £4,195.36, along with the two non-Sterling transaction fees of £24.04 and £91.33.

In addition, Nationwide should refund any interest and charges associated with the loan. I say this because had Nationwide done what I would expect, I'm satisfied the true scam would've come to light and Mr M could've cancelled the loan – which he'd taken for the sole purpose of investing with T - in line with his 14-day cooling off period. This includes the small amount he went onto spend that wasn't part of the scam, which I'm satisfied he wouldn't have used had the situation been different.

It will then be up to Mr M to decide whether to use the refund of the two payments to repay the loan in full.

If Mr M does decide he wishes to repay the loan in full upon receiving a refund of the scam losses, he should let me know. In those circumstances, I think it's correct for Nationwide to remove the loan from Mr M's credit file. As explained, had Nationwide done what I would expect and prevented the scam payments, Mr M could've taken advantage of his 14-day cooling off period for the loan and cancelled this altogether, repaying the money to Nationwide immediately. Therefore, the loan would never have appeared on his credit file. However, if Mr M wishes to continue to make monthly repayments instead – which he is entitled to do - then his credit file will accurately reflect this, and the loan will remain.

Finally, I think it's appropriate to make an award of £500 for the distress and inconvenience Mr M has suffered. What happened to Mr M has undoubtedly had a big impact on his mental health and wellbeing. In reaching the conclusion that £500 is fair, I'm mindful that Mr M's loss and emotional distress were ultimately caused by the callous act of a fraudster. But, Nationwide could ultimately have prevented the payments, so it's fair that it should compensate Mr M for its part in what he's been through."

Mr M's representative responded to the provisional decision letting us know that Mr M accepts it and wishes to repay the loan on receipt of the refund.

Nationwide also responded to the provisional decision, accepting it in the main. It had a few comments as follows:

- It had concerns with crediting the refund of the scam payments to Mr M directly. It pointed out that Mr M is a vulnerable adult and this may not be the most responsible thing to do as it could leave him in difficulty if he doesn't proactively pay off the loan himself. Instead, it proposed that the refund is used to clear the loan and the remainder would then be refunded to Mr M directly.
- It said that I asked for the credit search to be removed if Mr M repaid the loan within 60 days. But it feels to safeguard Mr M the loan application shouldn't be removed. It says that Nationwide have a duty to report accurate information. If Mr M decides to make a loan application in future with another lender and doesn't disclose he hasn't got sufficient mental capacity, it would question how the lender would assess and base their decision fairly if the record is not showing on Mr M's credit file. They'll lose the opportunity to see the monthly credit activity and ask to further questions about the previous loan.
- Finally, Nationwide said it would like medical evidence to understand the extent of Mr M's vulnerability and his consent to record a vulnerability indicator on its records.

my findings

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

Mr M has told us his intention is to pay off the loan using the refund and he agrees with Nationwide's stance around this. So, I see no reason not to direct Nationwide to use the refunded money, totalling £4,310.73, to first clear the loan and then refund Mr M the remainder. Nationwide should send Mr M confirmation his loan has been repaid once this has been completed.

Whilst I appreciate Nationwide's stance on the credit file issue, my decision remains unchanged on this point. I should clarify that the search Nationwide would've conducted prior to the loan being granted should remain. However, had Nationwide done what I would expect, the loan would not have appeared on Mr M's credit file. Therefore, it wouldn't be fair for me to say it should remain there now. Whilst I understand the intention behind Nationwide wanting the information to remain, it still remains Mr M's responsibility to share his condition and circumstances with future financial institutions – the loan on his credit file wouldn't warn lenders about this. Instead, having this loan on his credit file would be a reminder of what he's been through and I don't believe this to be fair given my conclusions.

Finally, Mr M's representative has said that if Nationwide want medical evidence around Mr M's condition, Mr M consents to them contacting his GP for this. This isn't something for me to comment on in this decision and would be something for Nationwide to discuss directly with Mr M and his representative.

my final decision

For the above reasons, I uphold this complaint about Nationwide Building Society — and I therefore require the bank to:

- Clear the remaining balance of the loan using the refund of £4,310.73 and refund Mr M the remaining amount within 28 days of receiving notification of his acceptance of my final decision; plus
- Refund any interest and charges associated with the loan;
- Remove the loan (apart from the search) from Mr M's credit file;
- Pay Mr M £500 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 May 2021.

Sarah Brimacombe
Ombudsman