

complaint

Mr S complains that Nationwide Building Society accepted a cheque into a third party's account which was drawn on an account he held with another bank and intended to be paid into his own, Nationwide account.

background

In early-November 2010, Mr S wrote a cheque for a considerable sum payable to "Nationwide BS" and drawn on the account he held with another bank ("Bank A"). He posted the cheque to Nationwide and recalls enclosing a paying-in slip with it.

In January 2011, Mr S checked his Nationwide account and discovered the cheque had not been credited, despite the money having been debited from his account with Bank A. Mr S complained to both Nationwide and Bank A about the matter.

It subsequently became apparent the cheque had been intercepted somehow and a third party's account number had been added to the 'payee' line of the cheque. It is now clear the third party had died a short time before the cheque was paid into his account so someone else paid it in and then withdrew the money. Nationwide closed the third party's account in December 2010 due to suspicious activity.

Mr S considers that Nationwide should have noticed the different handwriting used on the cheque and should have either refused to collect it or taken steps to verify that it was genuine. Nationwide refused to refund the money and Mr S referred a complaint to this service about both Nationwide and Bank A.

I issued a provisional decision in April 2013 in which I included additional background information and set out why I was not minded to uphold Mr S's complaint. I said, in summary, that:

- It was unclear how the cheque came to be held by an unknown third party and credited to that person's account, but I could not reasonably find Nationwide at fault for not having found this out. Mr S had suggested the cheque was taken by a Nationwide employee after the cheque was delivered, but there was little to show that was likely what had happened.
- The key issue was not how a third party obtained the cheque, but what Nationwide did when it 'collected' the cheque – that is, when it credited it to its other customer's account.
- The law protects Nationwide from liability for Mr S's losses if it acted in good faith and without negligence and I could not conclude it had failed to do so. The cheque was paid into an account that had been open for some time. And the cheque was originally made out to Nationwide, not to Mr S himself. The building society believed it was crediting the account of the person who was entitled to the proceeds of the cheque. And the fact the account number is written in a different hand is not necessarily a reason for suspicion in the same way that, for example, a change to the name of the payee might be.
- Mr S believes Nationwide should have done more to check the validity of the cheque. I accepted that Nationwide could have done more in this respect, but was not persuaded it was obliged to do so. The law requires only that the bank act in good faith and without negligence.

Mr S did not accept my provisional findings and provided substantial further submissions. He said, in summary, that:

- It is clear “Nationwide BS” and the third party’s account number are written in a different hand. As a result, Nationwide could have declared the cheque invalid or sought guidance from other members of staff and himself about whether to accept the cheque. Its decision, instead, to simply process the cheque was not prudent given its high value. The building society acted negligently in this respect.
- The third party died before the cheque was written, but it is possible Nationwide was not immediately told about this. However, it is clear the cheque must have been paid in by someone other than the account holder. Nationwide should have applied the “Know Your Customer” procedures and “due diligence” procedures applicable under the Money Laundering Regulations for occasional transactions worth more than €15,000, before accepting the cheque. If it had done so it should have queried, at least, why the money was being deposited and what the connection was with the third party.
- The withdrawals were made fairly rapidly after his cheque had cleared. Some were completed by cheque and this should have alerted Nationwide because the signatures must have been forged.
- A subsequent cheque was presented for payment at Nationwide, but Bank A recognised it to be forged and refused to pay it. Nationwide failed to identify this forgery and this supports his belief that its processes are not sufficiently robust.
- Nationwide failed to handle his initial queries and subsequent complaint appropriately. It took too long to investigate the matter and failed to provide an adequate explanation for what had happened after completing its investigations.
- The police have said the third party was vulnerable to people taking advantage of him and, while they consider fraud may have been committed, the evidence was not sufficient to enable their investigations to continue.

Nationwide accepted my provisional decision and provided some extra information, in confidence, relating to the third party.

my findings

Mr S has made a similar complaint against Bank A. I have considered all the available evidence and arguments provided in relation to both complaints, in order to decide what is fair and reasonable in the circumstances of this complaint.

Nationwide has provided further evidence that indicates it was unaware the third party had died when it processed the cheque and allowed the withdrawals. However, it is unwilling to provide much other information pertaining to the third party’s account, mainly due to the laws and limitations surrounding data protection.

I have no power to compel Nationwide to show me what exact procedures it followed and what checks were undertaken when it accepted the original cheque or processed any of the withdrawals. As explained in my provisional decision, my role is limited to considering whether Nationwide acted in good faith and without negligence when it collected the cheque.

I do not dispute that the account number was likely written by someone other than Mr S. But I remain satisfied that this alone is not necessarily a reason for suspicion in the same way that, for example, a change to the name of the payee might be.

For the reasons explained in my provisional decision, and summarised above, I do not consider that Nationwide acted negligently or without good faith.

my final decision

My final decision is that I do not uphold this complaint.

Ruth Lewis
ombudsman