

The complaint

Miss B complains Nationwide Building Society didn't do enough to protect her when she fell victim to a safe account scam.

What happened

Miss B has a couple of accounts with Nationwide Building Society, an account with an Electronic Money Institution (an "EMI") – who I'll refer to as "W" in the rest of this decision – and a credit card. She's been a customer of Nationwide for over 18 years.

Miss B says she received an email shortly before Christmas saying that a delivery fee was due on a package she was expecting to receive. She says she paid the delivery fee using her credit card believing the email to be genuine. The email was likely a phishing email.

On Boxing Day Miss B says she received a call from someone claiming to be her credit card provider saying that there had been some unusual activity on her card. Miss B says she was told her card had been compromised and that if she had other cards saved on her laptop those accounts had probably been compromised too. Miss B confirmed she had an account with Nationwide and W and says she subsequently received a call from someone claiming to be Nationwide saying that someone had tried to take £6,000 out of her account but that this had been blocked. Miss B says she was told to take steps to protect her money. She says she was first told to transfer the money from her account with W to what she was told was a "safe" account. She says she was then told to transfer the money from her account with Nationwide to the "safe" account.

Miss B says she was uncomfortable transferring the whole balance from her Nationwide account in one amount, so she sent two smaller payments – of £3,000 and then £5,000.

Miss B says that as she was completing a third payment for £4,000 someone came to check in on her and when she explained what was going on that person warned them that this was a scam. Miss B contacted Nationwide and W to let them know that she'd been scammed and to get her money back.

Nationwide said that it couldn't refund her money. W, on the other hand, agreed to refund the money that was in her account at the time – which she'd transferred to the new "safe" account. In addition, it agreed to refund 50% of the money that she'd transferred from her Nationwide account and then onto the new "safe" account. Miss B was happy with W's response and unhappy with Nationwide's response. So she complained to us.

One of our investigators looked into Miss B's complaint and said that they thought Nationwide should have intervened when Miss B attempted to make the second payment as it was unusual. That's because she hadn't sent money to her account with W before and this was the second transfer in two minutes bringing the total amount she'd transferred to £8,000. Our investigator thought that the scam would have come to light had Nationwide intervened and didn't think Miss B had been negligent. They said that they thought it was fair to ask Nationwide to reimburse the remaining £4,000 together with interest.

Nationwide disagreed with our investigator's recommendations. Nationwide said that as these were transfers to an account in Miss B's own name she hadn't made a loss at the point the funds left Nationwide, so it wasn't fair to tell it to refund any money. Nationwide also said that our investigator was in technically asking it to refund 50% of the first payment even though they didn't think Nationwide should have been concerned about that payment – and that also wasn't fair. In the circumstances, Nationwide asked for Miss B's complaint to be referred to an ombudsman for a decision. Her complaint was, as a result, passed onto me.

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.

In January I issued a provisional decision saying that I didn't agree that the payments made by Miss B were sufficiently unusual when compared to her normal account usage. Because of that, I didn't agree that this was a case where Nationwide should have intervened. That means I didn't agree that Nationwide missed an opportunity to prevent loss to Miss B. So, I said I was minded to not uphold this complaint. I did, however, also consider what would be a fair outcome in the event that I was wrong on that point, in part because our investigator has considered this in some detail. I did that so both parties will have an opportunity to comment on my thinking as a whole. Both parties were invited to reply to my provisional decision, and both did.

Miss B said that she didn't agree that the payments she'd made weren't unusual and backed this up with a detailed analysis of the payments she put together. I shared Miss B's response with Nationwide, and Nationwide's response with Miss B so that she could make further comments. Miss B also said that she'd sent three payments to W, not two, and said had it not been stopped by a third party it seems Nationwide would have kept on allowing these payments. In addition, she said she'd taken reasonable actions to check the phone number calling her was Nationwide's and that the timing – late at night on a Bank Holiday – should have put Nationwide on alert too. Nationwide said it agreed that the payments weren't unusual and that she does send and receive high value payments of a regular basis. Nationwide said that some of those payments were between her own account, and some are to third parties and that the amounts ranged from between £1,000 and £10,000 with an occasion credit being received higher than this.

In my provisional decision, this is what I said about the scam that Miss B had fallen victim to and on whether or not Nationwide should have intervened:

“There's no dispute that Miss B has fallen victim to a well organised “safe account scam”. I'm also satisfied that Miss B took several steps to make sure she was speaking to her bank. So, I agree with our investigator that this isn't a case where it would be right to say that Miss B has been negligent. She fell victim to a scam designed to scare, and to a scam that in this case was well organised. That means the main issues I have to decide is whether or not Nationwide should have intervened, whether or not that would have made a difference had it done so and, if so, what refund if any should Nationwide provide.

As I've already mentioned, I'm minded to say that I don't think Nationwide should have intervened in this case. But the case is finely balanced. For that reason, I'm not only going to say why I don't think Nationwide should have intervened but also what difference it would make if I were to decide that Nationwide should intervene.

should Nationwide have intervened?

Having looked through Miss B's statements I can see that she receives and sends large payments. The two payments she's complaining about, however, were the first time she'd made a payment to her account with W. That fact, and the fact that the first payment was for £3,000, doesn't in my opinion make that first payment unusual. So, I agree with our investigator that it didn't require an intervention from Nationwide. I do, however, think that the second payment, given that it was made only two minutes later and made to the same beneficiary, could have been sufficiently unusual for Nationwide to have intervened (subject to what I'm about to say). That's because the second payment brought the total amount that Miss B was sending to an account to which she'd not sent money to before to £8,000 – which is a significant amount. It's also relatively unusual to send two lots of money to the same account in such a short space of time. So why am I minded to think differently? I'll explain that now.

Having looked through Miss B's statements, I can see that she sent two much larger payments – one for £50,000 and one for £20,000 – in November 2022 to what appears to be an account in her name. I can also see that she sends and receives quite large payments on a regular basis. I don't think it would be fair to say that the second payment – even though it took the total Miss B has sent to £8,000 – was unusual enough to have required Nationwide to intervene given what I've just said. That's because, given what I've just said, I don't think it was sufficiently unusual when compared to her normal account usage. For that reason, I'm minded to say that Nationwide didn't miss an opportunity to prevent Miss B from making a loss and that it wouldn't, therefore, be fair to require Nationwide to refund her.

Nationwide has given a number of other reasons why it doesn't think it would be fair to make it liable – including the fact that these payments were made to an account in Miss B's name. I don't agree with the points Nationwide has made but don't intend to deal with them in detail. I don't, for example, agree with Nationwide that it shouldn't be liable at all because Miss B hadn't made a loss by the time the two payments had left her account – that only happened when she transferred the money out of her account with W. I say that because these types of scams – including the use of multi-stage fraud – are increasingly common. So, I would expect Nationwide to be aware of them and to take steps to protect its customers from falling victim to them.”

As I said in my provisional decision there's no dispute that Miss B has fallen victim to a well organised “safe account scam”. And I'm also satisfied that Miss B took several steps to make sure she was speaking to her bank. So, I agree with her that her actions were reasonable. And with our investigator that it wouldn't be right to say that she'd been negligent. The key question remains were these payments unusual.

As Miss B has mentioned she tried to make three payments to W only two of which went through. That's right. What I have to decide, however, is whether Nationwide should have intervened when she was making the first or the second of those payments and, if so, whether or not this would have made a difference. That's because if it would have made a difference Nationwide might be liable on the basis that it failed to prevent a loss.

The two payments that Miss B sent totalled £8,000 – and these payments were sent within two minutes of each other. Having thought very carefully about what both parties have said – and I can see Miss B in particular has put a lot of time and effort into her submissions – I remain of the view that there was not enough as far as these payments were concerned to have alerted Nationwide to the possibility that Miss B was at risk of fraud. I'll explain why.

Miss B has rightly pointed out that the overwhelming majority of the payments she makes are small, and that she's only made a handful of large payments to existing beneficiaries or accounts in her own name. But both these payments were to an account in her name, and

the small number of large payments she'd made are, in my view, still enough to mean that these ones wouldn't have been considered unusual or suspicious or totally out of character. In short, although the case is finely balanced, I remain of the view that the payments weren't unusual so it wouldn't be fair to expect Nationwide to have intervened. I appreciate that this will be disappointing for Miss B, and thank her for her submissions.

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 5 April 2024.

Nicolas Atkinson
Ombudsman