

The complaint

Mr and Mrs M complain that Nationwide Building Society (“Nationwide”) won’t refund the money they lost as part of a scam.

What happened

The background to this complaint is well known to both parties, so I’ll only refer to some key events here. The transactions listed below were from an account held jointly between Mr and Mrs M. But it seems Mrs M had all of the contact with the scammer, so I will mainly refer just to her actions from now on.

In August 2020, Mrs M clicked on an advert for investing. She says that she was contacted by a number of companies, including someone purporting to be from a crypto trading firm which had an office in London. Mrs M was persuaded to make the following payments to a crypto exchange (Bitstamp), via bank transfer. My understanding is that the funds were then transferred on to the scammer, that I will call B.

Transaction Number	Date	Amount	Merchant	Running Total
1	10/08/2020	£9,000	Bitstamp Ltd	£9,000
2	14/08/2020	£380 credit	Bitstamp Ltd	£8,620
3	25/08/2020	£10,000	Bitstamp Ltd	£18,620
4	25/08/2020	£6,780	Bitstamp Ltd	£25,400
5	27/08/2020	£10,000	Bitstamp Ltd	£35,400
6	27/08/2020	£2,000	Bitstamp Ltd	£37,400
7	16/09/2020	£10,000	Bitstamp Ltd	£47,400

When Mrs M was unable to withdraw the “profits” that she could see on B, she contacted Nationwide on 11/09/2020 to report that she thought she had been scammed. During this call Mrs M was advised not to make further payments to B. She however, made one more payment in an attempt to recover the funds that she had lost. When this still did not allow her to withdraw her “profits”, she eventually realised she had been scammed.

Several years later, Mr and Mrs M made a complaint via a representative to Nationwide and requested that the above transactions be refunded. Nationwide declined to do this.

I issued a Provisional Decision on 15 November 2023 in which I said the following

“I’ve considered all the available evidence and arguments to provisionally decide what’s fair and reasonable in the circumstances of this complaint.

At the time Mrs M made her payments, Nationwide was expected to process payments a customer authorised it to make; but as a matter of good industry practice, it should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam.

There is a balance to be struck: Nationwide had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't be involved in every transaction.

All of the payments in dispute were Faster Payments sent to a well-known crypto exchange. So, it's reasonable for me to conclude that Nationwide ought to have known that Mr and Mrs M were likely purchasing crypto at the time they sent these payments. I've also thought about whether there was anything else about the payments which ought to have concerned Nationwide.

The first three payments

I don't think I can fairly say that the first three payments were unusual enough for Nationwide to have intervened. I say this because, prior to those payments, the account had been used for large one off payments before - such as one for £18,000 earlier in 2020. So I think that these payments done on separate days were in line enough with the way the account had been used before to not have prompted Nationwide to have intervened.

Payment four

I do however think payment four, when taken cumulatively with payment three ought to have warranted an intervention from Nationwide. Payment four represented a total of £16,780 on the same day to a relatively new payee for Mr and Mrs M. Multiple large payments in a day to a new payee was unusual from what I can see on their account.

Nationwide has said Mr and Mrs M would have seen a warning when they sent the Faster Payments. I've read the contents of the warning Mr and Mrs M would have seen and I don't think it was relevant to the investment scam they'd fallen victim to.

Nationwide confirmed it didn't intervene until Mrs M contacted them and I think it was a missed opportunity to do so. If Nationwide had intervened (as I think it ought reasonably to), I'd have expected it to query with Mr and Mrs M what the purpose of the payment was. Given what Mrs M shared during her call with Nationwide on 11 September 2020, I think they'd have likely explained they were purchasing crypto to send it on to a third-party trading platform; where a third party would trade on their behalf; that they had allowed a third-party access to their computer; and that they were told there was zero risk in losing money whilst they were making large profits. Furthermore, B was not regulated by the FCA either. I think this would have prompted Nationwide to highlight that they were being scammed. I say this because there were clear signs that they were being scammed such as being told an investment is zero-risk and included a high reward and investments that are carried out through a non-regulated company which requires them to give a third-party remote access to their computer.

I then need to consider what would have happened had such an intervention occurred. It could be argued that Mrs M would have continued regardless of such a warning as she did so after the 11 September 2020 call. But having listened to that call, I don't think the Nationwide call went far enough. It was clear that what Mrs M was describing was almost certainly a scam, yet the member of staff did not say this they "advised" not sending further funds to B.

In general, in situations like this, as Nationwide should be more aware of scams than their customers, when Nationwide should really know a scam is happening it should

prevent further transactions from happening to the scammer. Also, had a more strident warning been provided earlier in the scam, I am satisfied that this would have had more of an effect than someone desperate to recover the funds that they had already sent.

So, before payment four was actually processed, Mr and Mrs M would probably have stopped in their tracks. But for Nationwide's failure to act on clear triggers of potential fraud or financial harm, Mr and Mrs M would probably have not lost this and the subsequent payments.

I've also thought about whether Mr and Mrs M's actions contributed to their losses. Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions.

In this instance, I do think that Mr and Mrs M should take some responsibility for their loss. Mrs M during her call with Nationwide had made it clear that she had done no real research, did not really understand what she was investing in and Mrs M also sounded like she had doubts from the start about B saying that it was a hard sell and it made her feel uncomfortable. Also I need to bear in mind that Mrs M did send a further payment to B despite being warned not to do so. So overall I feel it is appropriate to reduce the amount of redress I am proposing Nationwide to pay by 50%.

I've considered whether Nationwide could have recovered any of Mr and Mrs M's payments. But given that the payments were sent to a crypto exchange and were then forwarded on to B, I don't think that any recovery could have been made or that the Contingent Reimbursement Model applies in this instance.

Putting things right

- *Refund 50% of payments 4,5,6 and 7*
- *Pay 8% simple interest, per year, on this amount from the date of each payment to date of settlement (less any tax lawfully deductible)"*

In response to my provisional decision Mr and Mrs M agreed with what I had recommended. Nationwide did not agree and raised the following points.

They do not believe that an intervention at payment 4 would have altered Mr and Mrs M's decision to carry on with the transactions. They say that this is because when warned in the 11 September 2020 call, Mrs M still carried on with transaction 7. They also have added that if I did still feel that an intervention during payment 4 would have prevented the scam, I should not include payment 7 within the redress, as Mrs M was solely responsible for the loss as she had already been warned prior to making it that it was likely to be a scam.

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.

I have carefully considered the points that Nationwide has raised in response to my provisional decision. But I remain of the opinion that the outcome that I have proposed is fair and reasonable. Let me explain why.

Nationwide have said that Mrs M's actions after the call, during transaction 7, would have been the same as if a call had occurred during transaction 4. I disagree, as a warning given early on in the scam, in my opinion, carries more weight than one made after someone has lost most of their available funds. By transaction 7, Mrs M was desperate to recover the funds she had lost and it was the promise of recovering all that she had lost that led her to make the final payment, despite the warning provided by Nationwide. So I think overall, albeit on balance, had Mrs M been warned during transaction 4, she would have heeded the warning and the scam would have been stopped at this point.

In relation to Mrs M being solely liable for transaction 7, I don't think that it is reasonable in this instance for Nationwide to have allowed Mrs M to make further scam payments when it knew Mrs M was being scammed.

In any event I should also add that the discussion around payment 7 would not have happened if the scam had already been stopped. So but for Nationwide's failure to intervene and likely stop the scam at transaction 4 transaction 7 would never have occurred. So in this instance, I think that both parties share responsibility for this transaction.

Overall, I think that Nationwide should have intervened at payment 4 and that had it done so the scam would have been prevented at that point. I believe that Mr and Mrs M are partly responsible for their loss for the reasons set out above, so the redress that Nationwide should pay should be reduced by 50%.

Putting things right

So I am upholding this complaint in part and require Nationwide Building Society to do the following:

- Refund 50% of payments 4,5,6 and 7; and
- Pay 8% simple interest, per year, on this amount, from the date of each payment to date of settlement (less any tax lawfully deductible).

My final decision

Because of the reasons given above and in my provisional decision, my final decision is that I uphold this complaint in part and require Nationwide Building Society to pay the redress outlined above, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 05 January 2023.

Charlie Newton
Ombudsman