

The complaint

Miss M complains that Nationwide Building Society has not refunded a series of payments she lost to a scam.

What happened

Miss M was contacted by an individual on social media who claimed to work for an investment company. They offered to help Miss M invest in cryptocurrency and asked her to set up an account with a cryptocurrency trading platform I'll call 'MP'. Miss M would make card payments to MP to purchase cryptocurrency and then send the cryptocurrency to the investment company. She downloaded a separate app that allowed her to see her profits, which appeared to be doing well.

When Miss M attempted to withdraw her funds, she was told that she had to pay to 'upgrade' her account so she could make withdrawals, however she was then told the upgrade payment had failed, so she had to pay again. Eventually, she realised that she would not be able to withdraw her money and that this was a scam. In total, Miss M lost £3,432 in six debit card payments over six days. She raised a fraud claim with Nationwide.

Nationwide issued a final response in which they explained that as Miss M had made payments to an account in her name at MP, they could not treat the payments as fraudulent. However, they could attempt to recover the funds from the merchant. They said they had asked Miss M for a number of different pieces of evidence about the scam in order to raise a chargeback claim. However, they only received partial information and by the time Miss M got back on touch, the 120-day time limit to raise a chargeback had elapsed.

Miss M referred the complaint to our service and our Investigator looked into it. They explained that they did not feel the transactions were unusual enough to warrant intervention by Nationwide, so they did not think an opportunity to reveal the scam had been missed. And though they acknowledge Miss M had said she did send in the information Nationwide requested for the chargeback, the claim was unlikely to succeed anyway. So they did not think Nationwide needed to take further action.

Miss M disagreed with the outcome and so the complaint has been referred to me for a final decision.

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.

Both parties are in agreement that Miss M has been the victim of a scam. She has explained the process in which she was convinced to pay money to the scammer via MP and that she has now lost these funds.

In line with the Payment Services Regulations 2017 (PSRs), Miss M is not liable for payments that she did not authorise, unless she failed with gross negligence or intent to comply with the terms of the account or keep her personalised security details safe. Accordingly, I've considered whether Miss M authorised the payments in question here.

I can see that it is not in dispute that Miss M authorised the payments to MP, a cryptocurrency exchange, using her debit card. So, while I recognise that Miss M thought she was investing her funds and would see returns, this doesn't change the fact that she authorised them and is therefore presumed liable for the loss in the first instance.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Nationwide did enough to try to keep Miss M's account safe.

I've reviewed Miss M's statements around the time of the transactions, to gain an understanding of her general account activity. Having done so, I don't think the payments were significantly unusual or out of character enough to have warranted intervention by Nationwide. The payments ranged from around £200 to just over £1,000, which are not particularly high value. While I appreciate Miss M did not regularly make larger payments, I can see that when she did, she would generally transfer funds in from a savings account prior to making the payments. And this is what she did for these transactions, so I can't agree the pattern of behaviour was unusual.

From what I've seen, the cryptocurrency exchange, MP, that Miss M made the payments to is a legitimate company and it should be noted that not all payments made for cryptocurrency are a result of a scam. So, I don't think where the payments were headed ought to have automatically triggered Nationwide's attention.

With all of the above in mind, as Nationwide did not interact with Miss M prior to the payments being made, and I think they were not so unusual that they warranted intervention prior to being processed, I don't think Nationwide missed an opportunity to prevent the payments before they were sent.

Miss M contacted Nationwide on 13 May 2021 to raise the fraud claim. As the payments were made using a debit card, the only recourse for potential recovery would be through the chargeback scheme. The chargeback scheme is voluntary and there is no guarantee of a refund when it is used. It is a process by which disputes can be resolved through card issuers, such as Nationwide, and the merchant, in this case MP. So, I've considered if Nationwide should have done more during the chargeback claim.

Nationwide have provided contact notes showing that it requested evidence from Miss M, and I can see that she did provide some of this on the same day it was requested. On balance, I do think that Nationwide could have contacted Miss M again if it felt important information was still missing, but I can't see that they did. However, I still don't think it's more likely Miss M would have had her funds returned if they did. I'll explain why in more detail.

The transactions Miss M has raised a complaint about were made to MP to purchase cryptocurrency. The cryptocurrency was then passed to the scammer. Because of this, the transactions that the chargeback would be raised for were to a legitimate business that provided a service as a result of the transactions, i.e., the purchase of cryptocurrency, which is what Miss M asked them to do. So, I cannot agree that there would be reasonable grounds for a chargeback in this case as the goods and services were received.

Having carefully considered everything, I do not think Nationwide needs to take any further action in relation to Miss M's complaint.

My final decision

I do not uphold Miss M's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 13 October 2023.

Rebecca Norris
Ombudsman