

The complaint

Mrs C complains that Nationwide Building Society didn't do enough to protect her from losing money to scammers.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything here. In brief summary, Mrs C has said that through April to June 2022 she made numerous payments from her Nationwide account that were ultimately lost to scammers.

Nationwide ultimately didn't reimburse Mrs C's lost funds, and Mrs C referred her complaint about Nationwide to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Mrs C and Nationwide my provisional decision on 4 August 2023. Now that both parties have had an opportunity to reply, I'm ready to explain my 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.

Having done so, I've reached the same conclusions as in my provisional decision, and for materially the same reasons. I've explained the reasons for my decision again below, with some further comment where I have deemed it appropriate to address Mrs C's response to my provisional decision.

First, let me clarify the alleged scams this decision is about. Mrs C has referred to two sets of payments: one going to an alleged investment scam orchestrated by who I'll call F; and another set being lost to a romance/recovery scam (which I'll call the recovery scam). The parties will be aware that previously our Investigator, in this case, considered and shared their view on the investment scam only. This was because, at that time, Mrs C's complaint about Nationwide concerning the recovery scam was with us as a separate case. However, since both scams are inherently linked, it's appropriate for them to be considered together. So that's what I've done in this decision. I understand the parties will have been previously advised this would happen.

Mrs C's submissions are that: (1) she lost payments from her Nationwide account totalling £167,050 from 8 April 2022 to 17 June 2022 to the investment scam; and (2) she lost payments from her Nationwide account totalling £102,100 from 9 May 2022 to 9 June 2022 to the recovery scam.

I understand all payments were made to CB Payments to fund Mrs C's Coinbase account, from where Mrs C then sent them onto the scammers. In the case of the investment scam, the payments were sent on from Mrs C's Coinbase account to F to fund her 'trading account' with F. In the case of the recovery scam, the payments were sent on from Mrs C's Coinbase account to the recovery scammers for various parts of the 'recovery' process.

I'm really sorry Mrs C lost this money. This was an incredibly large amount of money to lose to scams. Fraud of this type can be deeply upsetting, and she has my heartfelt sympathy. However, this doesn't automatically entitle her to a refund from Nationwide. It would only be fair for me to tell Nationwide to reimburse Mrs C some or all of her funds if I thought it reasonably ought to have prevented the payments in the first place, or it unreasonably hindered recovery of the funds after the payments had been made; and if I was satisfied, overall, that this was a fair and reasonable outcome.

I'm sorry as I know Mrs C will be extremely disappointed. I've thought about this case really carefully. Unfortunately for Mrs C, I don't think it would be fair to ask Nationwide to reimburse her. I'll explain why.

Prevention

I'm satisfied Mrs C authorised the relevant payments. Nationwide would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mrs C is presumed liable for the loss in the first instance, in circumstances where she authorised the payments. That said, as a matter of good industry practice Nationwide should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect Nationwide to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.

In this case, it wasn't unusual for large payments to be made from Mrs C's account and sometimes quite regularly. For example:

- two payments totalling £13,750 on 28 March 2022;
- two payments totalling £8,500 on 25 February 2022;
- three payments totalling £30,000 on 3 February 2022;
- one payment of £4,502.80 on 14 January 2022;
- a transfer for £32,500 on 12 January 2022;
- four payments totalling £46,000 on 23 and 24 December 2021;
- a payment of £8,000 to CB Payments on 12 February 2021;
- a payment of £1,000 to CB Payments on 8 February 2021;
- a payment of £1,000 to CB Payments on 3 February 2021.

The payments Mrs C made as a result of the scams between April 2022 and June 2022 were generally for large amounts too (of the 34 payments to the scams, 20 were for £10,000). And they were often very closely spaced in time. So I don't think the prior payments I've listed above absolved Nationwide from its obligations to appropriately intervene in the scam payments. Ultimately, however, Nationwide *did* intervene. Unfortunately, as the parties are aware, this didn't lead to the prevention of Mrs C's payments to the scams. Of course this doesn't automatically mean Mrs C's complaint should fail. Particularly, I've thought very carefully about whether Nationwide intervened *appropriately* when it did do so, whether Nationwide reasonably ought to have intervened *further* or *at a different stage* (earlier for example) – and whether any of this is likely to have made a difference.

In my view, the key issue in this case is whether Mrs C was open with Nationwide when it *did* intervene; and if she wasn't open with Nationwide then, whether this would most likely

have been different if Nationwide had intervened more than it did or at a different stage. I say this because, given what Mrs C has now said and submitted about F and the recovery scam, I'm satisfied that *if* Nationwide had been able to obtain the real context behind Mrs C's payments at the time, it most likely would have been able to prevent Mrs C's further payments, or at the very least give Mrs C the sternest warning possible that she was being scammed and should stop making the payments. This is because Nationwide would, or ought to, have been well aware of scams like this where the customer is asked by the scammers to first transfer money to crypto accounts in the customer's own name before, only then, transferring the cryptocurrency onto the scammers from there. F and the recovery scam had clear signs of being scams that I wouldn't have expected Nationwide to miss. However, if Mrs C wasn't upfront with Nationwide about the real reason for her payments, Nationwide's ability to warn Mrs C, and make a difference, would have been limited.

With all of this in mind, I've listened very carefully to the recordings of calls Nationwide had with Mrs C on 3 May 2022, (I understand Mrs C's representative has been provided with a copy of these also). The salient call is the one that lasted approximately seven minutes. In this call:

- Nationwide said it was calling to talk about recent account activity. It explained there had been a lot of crypto-related payments on her account. It asked her about loans (from other lenders) that had just hit her account, and she said these were for home improvements. Mrs C said she did have crypto with Coinbase and she put money in there every now and again to have a 'dabble'.
- Nationwide said it sees so many different types of crypto scams and the market is very volatile even when things are genuine, so it wanted to make sure she wasn't taking out loans to put into crypto. Mrs C answered very clearly no, that's not what she was doing (taking out loans to invest in crypto); and that she only transferred into Coinbase, which was her own account, with which she did her own thing. Nationwide then asked Mrs C if it was her own wallet that no one else has control of (which Mrs C said it was), since, it told Mrs C, it sees a lot of customers who find or see things online, or they're contacted, and essentially they don't have control of the wallet, or when they try and take money out they have difficulty doing so.
- Nationwide then said, so about these payments today, there's one going to Revolut, and there's another one going to Nexo; are these payments for an investment with crypto? Mrs C said, "no, not yet", but she does have separate accounts now because it's easier for her, now she's getting more used to it. She said one of the accounts was going to have money put into it for savings really, because she finds with her Nationwide account money, she can too easily spend it.
- Nationwide then wanted to check with Mrs C, with regards to the crypto, that she understood the liability and risks and everything involved. Mrs C said, yes, definitely, 100%, yes, "that's why I only do it with Coinbase and I only do it myself. Nobody influences me or helps me, or anything. It's my own doing".
- Nationwide asked Mrs C whether she was happy she can afford the loans (to which Mrs C said yes) and that she's not reliant on crypto to pay them back, to which Mrs C replied "No, no, definitely not".

Bearing in mind the answers Mrs C gave on this call, previous large payments out of her account that weren't scam related, and the fact Mrs C had previously, over a year before, paid money to her Coinbase account, I don't think Nationwide's intervention was unreasonable.

Mrs C's representative has said Nationwide, during the call, focussed a lot on Mrs C having control of and access to the wallet (which she did), and that had it given more *relevant* warnings, this would have made a difference. However, I'm satisfied Mrs C was intent on the call not to be upfront with Nationwide, and she did so in a way that was convincing. She didn't reveal what we now know she asserts about the loans. She misled Nationwide by stating that she was investing in crypto on her own accord, without help or influence from anyone else. And I'm not persuaded there is anything Nationwide could have said that is likely to have changed Mrs C's intention to not be open with Nationwide and to ensure the payments were made.

Neither have I seen anything that persuades me Mrs C is likely to have reacted materially differently if Nationwide had intervened at an earlier or later stage. I can see from the evidence submitted that Mrs C appears to have been contacted by the recovery scammers on 4 May 2022 (just one day after the above call with Nationwide). But I am mindful that the evidence I've seen around the recovery scam indicates it had a certain undercover flavour to it (for example, that a judge would be paid). I also note that even after Mrs C ceased payments to the recovery scam, she continued the payments to F, not only from her Nationwide account, but also from her Revolut account.

I've thought very carefully about the points Mrs C's representative has made in response to my provisional decision. In summary, it's said Nationwide ought to have seen Mrs C had sent over a quarter of a million pounds to crypto which is inherently high risk and would carry an elevated likelihood of being related to a fraud or scam, and that this was at odds with Mrs C's claim she didn't have much investment experience and only 'dabbled'; and Nationwide also ought to have seen she had used debt to fund some of the transactions. Mrs C's representative has also said that Nationwide ought to have been well aware Mrs C might not be upfront during any intervention calls if she was being scammed (given how, Nationwide would understand, scams like this often play out); that it's possible to hear on the intervention call (referred to above) that Nationwide had doubts about Mrs C's situation; that the short intervention call wasn't sufficient in the circumstances; and that Nationwide should consequently have triggered Banking Protocol, which, it says, most likely would have prevented the payments.

I have taken these points on board, but payments to crypto aren't always made as a result of a scam of course. And Mrs C had over a year previously (in February 2021) made payments to her Coinbase account already. Also, as already stated, prior to the scam payments it wasn't unusual for large payments to be made from Mrs C's account and sometimes quite regularly. Also, whilst I would expect Nationwide to understand that it's not uncommon for victims of scams like this to not be upfront with their banks about the real reasons for their payments, I think Mrs C was persuasive during the call. And whilst I'm satisfied it was appropriate for Nationwide to intervene as it did, I'm not persuaded it would be fair and reasonable to hold it responsible for not doing more.

I have to be fair. And on the evidence before me, I'm not persuaded a reasonable level of intervention from Nationwide at any stage is likely to have made a difference here. The evidence suggests it's more likely than not that Mrs C was intent on making the payments and not being open with Nationwide, and that she likely would have done so anyway. However, for the sake of completeness, even if I thought Nationwide had unreasonably missed an opportunity to prevent the payments (which I don't), I think Mrs C acted with such lack of care in not being open with Nationwide and continuing to make the payments as I've described above, that, even then, it would not have been fair, in this case, to ask Nationwide to reimburse her.

Recovery

The scam payments were sent from Nationwide to a Coinbase account in Mrs C's name, from where she then moved the funds onto the scammers. I don't think it's surprising Nationwide was unable to recover the funds in these circumstances. And I'm satisfied I can't say Nationwide unreasonably hindered recovery of the funds, nor therefore that it can be held responsible for Mrs C not being able to recover the funds.

I realise this means Mrs C is substantially out of pocket, and I'm really very sorry she's lost money. However, for the reasons I've explained, I don't think I can reasonably tell Nationwide to reimburse her.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 October 2023.

Neil Bridge
Ombudsman