

The complaint

Mrs G and Mr P complain that Nationwide Building Society (“Nationwide”) refuses to refund their losses after they fell victim to a scam.

The complaint involves payments from a joint account, but Mr P made the payments related to the scam, so I’ll mainly refer to Mr P throughout this decision. Mrs G and Mr P also have a representative helping them with the complaint.

What happened

Mr P says he was recommended the scam investment company (which I’ll call S) by a friend he’d known for over 10 years. He told Mr P he’d personally invested with S and received a good return on his investment. A manager (who Mr P believed to be working for S) got in touch with Mr P and told him she could invest for him.

Mr P made payments from his Nationwide account into an account in his own name with a crypto exchange. The money then went on from there to S to trade on his behalf.

Mr P says he initially sent a payment to S of £303.53 on 16 February 2021. But on reviewing his statements, it seems this was the only payment not made to the crypto exchange. This appears to have been a debit card payment to “*Digital Marketing ...*”. He did then make several payments after this to the crypto exchange ranging from £10 to £1,500. On 30 June 2021 Mr P was able to withdraw £500, which he immediately reinvested. But this further convinced Mr P that he was dealing with a legitimate company. The final payment Mr P made was for £2,500 on 20 August 2021 – this was the largest payment Mr P made.

In October 2021, Mr P requested to withdraw his entire account balance of around £9,000 from S. After being given some excuses by the scammers, Mr P then found that the website no longer existed and contact from the manager had stopped.

Nationwide says Mr P reported the matter to Nationwide in March 2022. Nationwide tried to retrieve any money still held with the crypto exchange, but nothing remained. Nationwide explained that it was not liable for the losses Mr P had suffered. Mr P subsequently raised a complaint. Nationwide issued its final response explaining that while it was very sorry for what had happened to Mr P, it had done nothing wrong and it would not be refunding the money to him.

Unhappy with its response, he referred the matter to this service. One of our investigators looked into what happened and didn’t think Nationwide should have to return the money to Mrs G and Mr P. She felt that the transaction amounts were not significant enough to have caused Nationwide to have contacted him. And even if Nationwide *had* contacted him before the final (and largest) payment of £2,500 was sent, given his prior dealings with S, it’s likely Mr P would have sent the payment anyway.

Mrs G and Mr P (through their representative) asked for an Ombudsman to review the matter explaining that the transactions were unusual and Nationwide ought to have contacted them about the payments before they were allowed through. Had they done so,

Nationwide would have been able to identify that this was a scam and prevented them from losing this money.

Nationwide agreed with our investigators' view of the complaint and also submitted Mrs G and Mr P's bank statements. It made no further comments.

As the complaint couldn't be resolved, it was passed to me.

In my provisional decision of 3 July 2023, I set out why I was minded to not uphold the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Mrs G and Mr P replied accepting the findings in the provisional decision while Nationwide did not reply.

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 my provisional decision I explained the following:

Firstly, I think it may be helpful to set out that financial businesses (like banks and building societies) have an obligation to process the payments its customer authorises it to make both under the regulations applicable and the terms and conditions of accounts. However, businesses also have a duty to try to prevent their customers falling victim to a scam. Businesses need to strike a balance between intervening in payments to prevent scams or financial harm, and the risk of unnecessarily inconveniencing or delaying legitimate transactions.

What this means is that Nationwide is generally expected to process any payments Mrs G and Mr P authorise, but it also has to monitor transactions. If any transactions are flagged as suspicious, or sufficiently unusual – Nationwide should take measures to prevent its customers, such as Mrs G and Mr P, falling victim to a scam.

It may also be helpful to explain, that Nationwide didn't scam Mrs G and Mr P and was not the perpetrator of their losses. And, as explained above, businesses usually are under an obligation to process payments authorised by consumers. The starting point is that, if consumers authorised the payments, then they're responsible.

In order for me to uphold a complaint of this nature, and hold Nationwide liable for the losses instead of Mrs G and Mr P, I'd need to be satisfied that Nationwide failed in its duty to protect Mrs G and Mr P in some way, and that if it had instead done what it should have done, this either would have stopped the losses from occurring in the first place or helped to mitigate the losses once notified of the potential scam (by retrieving the money for example).

The relevant transactions Mr P sent from his Nationwide account were for relatively small amounts. I appreciate these amounts might be a lot of money for many consumers, but when compared to the thousands of transactions a business like Nationwide processes – none of them are sufficiently significant figures that I would expect to trigger alarm bells. It's not uncommon for consumers to transfer money to crypto exchanges and many of these transactions are completely legitimate. I have also looked at the statements Nationwide submitted, and Mrs G and Mr P had a significant amount of money coming in and going out of their account. Some payments and transfers were significantly more than the largest payment made as a result of the scam (of £2,500). Nothing about the scam payments strikes me as being unusual or suspicious that I think ought to have triggered an intervention by

Nationwide. Even the largest payment of £2,500 was significantly less than some of the other payments leaving their account.

So, when assessing if Nationwide should have contacted Mrs G and Mr P – I have to bear in mind the information available to Nationwide at the time of the event. In the absence of any other concerning factors, I don't think these payments were sufficiently unusual, uncharacteristic or otherwise suspicious to have prompted an intervention by Nationwide. So, like our investigator says, the transactions made were not individually and collectively significant enough, in my view, to have alerted Nationwide to something having gone awry.

For the sake of completeness, however, and for the benefit of Mrs G and Mr P, I've nonetheless thought about what I think most likely would have happened if Nationwide had flagged the last and largest transaction (of £2,500) as suspicious and contacted Mr P – to discuss what was going on.

Having looked at all the evidence provided, I don't think an intervention from Nationwide would have most likely prevented the loss at that stage and I'll explain why.

Before the payment of £2,500 was made from the account in August 2021, Mr P had no reasons to think this was a scam. S had been recommended to him by a close friend who told him he'd received a good return on his investment.

Mr P has also told us that he:

"had several calls with the scammer, building a relationship of trust. Based on the many positive reviews online, the company website, and the professional nature of the scammer I confirmed I would like to invest as I was sufficiently satisfied that the scammer was genuine."

By this time, Mr P had also been able to withdraw £500 convincing him that the S was completely legitimate, and everything was working as it was supposed to.

So, in my view, I don't think any of these payments were unusual or suspicious based on Mr P and Mrs G's account activity. But even if Nationwide had contacted Mr P in August 2021, to discuss the final payment, I have no reason to think that Mr P would have been anything but honest with Nationwide. I think Mr P would likely have told Nationwide that S had been recommended by a friend who'd received profit from S, that he'd been able to withdraw his own money and that he trusted S. None of that indicates a scam so even if Nationwide did give Mr P a warning that this might be scam, I don't think it would have stopped Mr P from making that payment, given his experience with S up until that point. Nationwide can only share its concerns, but ultimately it would still have been up to Mr P to decide whether to send the payment, given I've seen nothing to suggest Nationwide reasonably ought to have known S was running a scam (as distinguished from it warning Mr P that it might be).

So, like our investigator says, I'm therefore not satisfied that Nationwide could have prevented the scam at this stage, even if it had intervened. As Mr P sent the money to an account in his own name with the crypto exchange, before he sent it off to the scammers, Nationwide couldn't have retrieved the money for him after it was alerted to the scam – so I don't think it could have mitigated their losses at this stage.

I would add that while Mr P says the first payment he made to the crypto exchange was for £303, this looks like a VISA payment made to a completely different company (rather than a transfer to the crypto exchange). If this was a VISA card payment, the only way he could potentially have sought recovery of this amount through Nationwide would have been via a chargeback. But he raised his concerns with Nationwide over a year after that payment had been processed by Nationwide – so it's likely he would have been out of time to raise a

chargeback request. And in any event, even if he wasn't out of time, it seems unlikely a chargeback would have succeeded given there's no evidence the merchant paid directly here didn't provide the services intended. Even if the money had been paid directly to the scammer though, there are very limited chargeback grounds in situations like this, with quite strict evidential requirements, which I am not persuaded Mr P would have been able to fulfil. So, I don't think it's likely this money (the £303) would have been recoverable through Nationwide.

I'm very sorry Mrs G and Mr P have lost this amount of money and I have no doubt that this has caused them a significant amount of distress. But as I've said above, Nationwide was not the perpetrator of the scam, and I don't think it acted incorrectly in not intervening before these payments were sent. And even if it had intervened before the final payment, I'm not satisfied that Mr P would have heeded its warnings. So, as it couldn't have most likely prevented the loss, I don't think it's fair for it to be held liable for Mrs G and Mr P's losses.

Neither Nationwide nor Mrs G and Mr P have made any additional comments or submissions. So, in the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. So, while I am again very sorry that Mrs G and Mr P fell victim to this scam, my decision remains as set out in my provisional decision. With this in mind, I don't uphold this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr P to accept or reject my decision before 17 August 2023.

Asma Begum
Ombudsman