

## **The complaint**

Mrs S complains that Nationwide Building Society (“Nationwide”) won’t refund the money she 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.

Mrs S saw an advert for an investment scheme on social media, it appeared to be endorsed by a well-known financial journalist. Mrs S left her details on an online form and was then contacted by someone purporting to be from the investment scheme. Mrs S was persuaded to open accounts with an e-money provider (W) and a crypto currency exchange (B) and to download remote access software. She was then persuaded to make a series of payments from her Nationwide account to W, on to B, and then on to a third party. Unfortunately, and unknown to her at the time, Mrs S was dealing with a scammer.

When Mrs S asked to withdraw her profits, she was then persuaded to make significant further payments to release her funds. It was only when she still did not receive her money, and was asked to pay even more fees, that Mrs S became suspicious and realised she had been the victim of a scam.

When Mrs S reported the scam to Nationwide it looked into what had happened, but did not agree it had any liability for her loss. Mrs S remained unhappy and so referred her complaint to our service.

One of our Investigators looked into the complaint and they felt that Nationwide should have stepped in to query what the payments were for by the time of the third transfer Mrs S made to the scam. So they felt Nationwide should refund the payments made from that point onwards, minus a 50% deduction as the Investigator also felt Mrs S should bear some responsibility for what happened here.

Mrs S accepted the investigator’s findings, Nationwide did not. It maintained that it felt we should be considering W’s role in Mrs S’ loss. Nonetheless, Nationwide did suggest that it could perhaps agree that it should have stepped in to question Mrs S about the payments by the time of the fifth transfer she made, given the pattern that was emerging.

I issued a provisional decision on this case on 15 February 2024, explaining why I felt that the trigger point for Nationwide to intervene should have been slightly later on, but otherwise agreeing with the investigator’s findings. Mrs S accepted my provisional decision, Nationwide did not. It maintains that the loss here was from Mrs S’s account with W.

## **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've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I explained the following:

*"It's not disputed that Mrs S authorised the payments that are the subject of this complaint. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mrs S is responsible for them. That remains the case even though Mrs S was the unfortunate victim of a scam.*

*Because of this, Mrs S is not automatically entitled to a refund. But 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.*

*Taking the above into consideration, I need to decide whether Nationwide acted fairly and reasonably in its dealings with Mrs S, or whether it should have done more than it did.*

*The first payments made as part of this scam were card payments, for £5 and then for £3,610.80 and, in the context of Mrs S's account usage, I don't think those payments would have caused Nationwide any concern. One-off larger card payments are not that uncommon, and Mrs S did periodically make much larger payments from her account. And, for similar reasons, I don't think the first few transfers to the account with W should have triggered any intervention from Nationwide either. The first transfers were for £50 and £7,500 on 9 June, there was then a significant gap before the next set of payments, for £5,000 and £7,000 on 21 June. I acknowledge that, on value alone, these payments do seem high. But I think I must also bear in mind that Mrs S had made similar types of payments before – ie. two large payments on one day preceded by a transfer in from her savings.*

*I also think that Nationwide would have been somewhat reassured at this stage by the fact that the funds were evidently going to an account in Mrs S's own name, as confirmed by its systems when she set the account with W up as a new payee. 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.*

*I do however think the sixth faster payment, for £4,900 and made on 22 June, when taken cumulatively with the payments made the previous day, ought to have warranted an intervention from Nationwide. This was the fourth transfer in two days, three of which were for significant amounts, it was also to an e-money institution, which was a relatively new payee. And I think it's reasonable that Nationwide would have been aware of the increasing incidence of e-money institutions being used in this kind of multi-stage scam. So I'm satisfied that, bearing in mind all these factors, it would have been reasonable for Nationwide to intervene at this stage to reassure itself that Mrs S was not at risk of financial harm.*

*I do note that, when Mrs S first set up her W account as a new payee, Nationwide did ask her what her payments to that account would be for, and when she selected 'investment' it then provided a written warning which detailed some of the hallmarks of an investment scam. But this warning was limited in scope, and was given in the very early stages of the scam. And don't consider that the points it detailed would have rung any particular alarm bells for Mrs S at that stage. And as the scam progressed, as detailed above, I consider that more direct intervention was warranted.*

*So what I now need to decide, based on the available evidence, is what would most likely have happened, had Nationwide intervened effectively.*

*I would expect Nationwide to have asked Mrs S questions such as who the payment was for, what it was for, and for the basic surrounding context of the payment - it could, for example have, asked how she had found the investment opportunity, whether she'd parted with personal details in order to open a trading account, whether she was being helped by any third parties and had they used remote access software, whether the investment opportunity was linked to a prominent individual, advertised on social media etc. These are typical features of cryptocurrency scams.*

*I note that Mrs S says she was told not to tell Nationwide that the payments she was making were for cryptocurrency, but she doesn't appear to have been given any other details as a cover story to tell to Nationwide. So I think effective questioning would likely have quite quickly unearthed that something untoward may be going on. I think Nationwide could have quickly learned from any conversation with Mrs S the basic background to the payment instruction – that she was moving money to then invest in an opportunity which she'd decided to pursue after learning about it online, and it was figureheaded by a leading financial journalist. And that she had been guided by a third party using AnyDesk.*

*Even though the conversation would have identified the payment was going to Mrs S's own account with W (before being sent onto the scammers), the conversation shouldn't have stopped there on the basis that the money appeared to be going to somewhere safe and within Mrs S's control. This is because by 2022 Nationwide was well aware – or ought to have been well aware – of how scams like this work – including that the customer often moves money onto an account in their own name before moving it on again to scammers.*

*So, in the round, I think Nationwide would have been concerned by what the conversation would most likely have revealed and so warned Mrs S, explaining the typical characteristics of scams like this. Had it done so I think Mrs S would have listened and recognised she was at risk. It follows I think Mrs S would not have gone ahead with payment six, nor any subsequent payments.*

*I've taken account of Nationwide's comments that we should be considering W's role in Mrs S' loss. But whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, Mrs S has not referred a complaint about W to our service and DISP does not empower me to instruct Mrs S to make or refer a complaint about another business.*

*My role here is to consider the complaint in front of me. And, in doing so, I have found that Nationwide did not act fairly and reasonably in the circumstances of this case. And whilst it is possible that Mrs S may have cause to complain about W's role here, I am not persuaded it would be fair to reduce the award in this complaint solely for that reason. Mrs S is entitled to complain only about Nationwide, and I am satisfied that Nationwide could have prevented some of the losses she suffered if it had acted fairly and reasonably.*

*In reaching my conclusions about what is fair and reasonable in this case, I have also considered whether Mrs S should bear some responsibility for her loss. And, while there were some sophisticated aspects to this scam, I do think it would be reasonable to hold Mrs S partially responsible for her loss here. I say this because it's not clear that Mrs S did any significant research before deciding to invest in this scheme, and if she had done so it's likely she would have seen the negative reviews which suggested it might not be a legitimate opportunity. I also note that, as the scam progressed, Mrs S was being asked to pay*

*increasingly large fees – apparently by various different parties – in order to release her profits. I think Mrs S should reasonably have been concerned by this, but she doesn't appear to have questioned this with the scammers and she continued to make further payments. With this in mind, I consider it reasonable for Mrs S to bear joint responsibility for her loss.*

*I have then looked at whether Nationwide did what we would expect in a scam case to try to recover the funds. However, in the circumstances of this case I am satisfied there was no reasonable opportunity for it to recover any of the funds.*

*So, in summary, I currently intend to find that when Mrs S made the sixth transfer (for £4,900 on 22 June 2022), Nationwide could have done more to protect her from the risk of financial harm. Had nationwide contacted Mrs S directly and asked some open questions about what was happening, and provided an appropriate tailored warning, I'm persuaded it is more likely than not the scam would have come to light, and Mrs S wouldn't have lost out on the further funds she went on to pay to the scammers. So I am intending to recommend that Nationwide refund the payments from the sixth transfer onwards, minus a 50% deduction for Mrs S' own contributory negligence."*

I appreciate that Nationwide disagrees with my findings, specifically stating that it feels it should not be held liable here as Mrs S' loss did not occur at the point the funds were sent from her Nationwide account. But I had already considered this point when reaching my provisional decision, and Nationwide has not made any further comments on this issue that would lead me to change my findings. So, my findings remain as set out above.

### **Putting things right**

To resolve this complaint Nationwide should:

- Refund 50% of the payments made to the scam from the payment for £4,900 on 22 June 2022 onwards (inclusive) less any funds already recovered or refunded.
- Pay 8% simple interest, per year, on this amount from the date of each payment to the date of settlement.

### **My final decision**

I uphold this complaint in part. Nationwide Building Society should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 17 April 2024.

Sophie Mitchell  
**Ombudsman**