

The complaint

Mr and Mrs G complain that Nationwide Building Society (Nationwide) won't refund the money they lost when Mrs G fell victim to a scam.

What happened

Mrs G saw a social media post from her nephew's account promoting cryptocurrency trading. She reached out to him via the social media platform and was put in touch with the trading company – 'S'.

After speaking to both S and her nephew via social media, Mrs G decided to invest. She sent a number of payments from her joint Nationwide account to a cryptocurrency exchange, to buy cryptocurrency to send on to S.

After sending over a number of payments, Mrs G tried to make a withdrawal – but was told she needed to pay 10% of the value first. She attempted this three times, but still wasn't able to withdraw her funds. She was directed to set up and send funds on to a new account, which she thought she had access to – but didn't. I understand some of the later transactions were funded from an account she holds in her country of residence.

It transpired that Mrs G's nephew's social media profile had been hacked and used by scammers to promote a fake trading platform. Mrs G has shown her profile was subsequently hacked and used in a similar way.

Realising she had been scammed, Mrs G contacted Nationwide. It investigated her fraud claim but didn't agree to refund her. It maintained its position when she complained about the claim outcome. It said there was no evidence of fraudulent activity. I understand it paid £25 compensation for a delay cancelling Mr and Mrs G's debit card following the fraud claim.

Unhappy with Nationwide's response, Mr and Mrs G referred the complaint to our service. Our investigator didn't recommend that Mr and Mrs G should be refunded. She said it was unclear whether Mrs G had been scammed – but regardless, she didn't think Nationwide had cause to be concerned about the payments at the time, so hadn't done anything wrong by sending them as requested.

Mr and Mrs G appealed the investigator's view. In summary, they said Nationwide should have been concerned as they sent around £15,000 to cryptocurrency in a matter of days. So, their case was passed to me to review.

I issued my provisional decision in November 2023 explaining I was minded to uphold the complaint. Pending clarification from Nationwide about the payment order, I proposed that it should refund 50% of Mr and Mrs G's loss from the seventh or eighth scam payment onwards.

I invited both parties to submit further comments or evidence in response to what I was minded to conclude. Nationwide responded to confirm it accepted my provisional decision, and that it would refund Mr and Mrs G from the seventh payment onwards.

Mr and Mrs G initially queried the payments we were considering. But they have since confirmed the table I set out covers all the scam payments made from the Nationwide account.

Mr and Mrs G also queried why the 50% refund was from payment seven (or eight) onwards, rather than the full amount. They went on to say the sixth payment was the point at which Nationwide should have intervened, so that should be included in the refund. They also queried why Nationwide said a tax deduction would apply to the interest award. Mrs G also highlighted some difficult circumstances from the time of the scam which affected her mindset.

As both parties have responded, I'm now proceeding to issue 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 come to the same overall conclusions as I did in my provisional decision, largely for the same reasons. So much of what I set out below will be a repetition of what I explained in my provisional decision. But I have amended my reasoning to reflect the responses I have received from both sides.

In line with the Payment Services Regulations 2017 (PSRs), the starting position is that Mr and Mrs G are liable for payments they authorise – as Nationwide is expected to execute their authorised payment instructions without undue delay. And it's accepted that Mrs G authorised these payments.

However, there are circumstances when it might be appropriate for Nationwide to take additional steps before processing a payment. Such as when there are grounds to suspect the payment presented a fraud risk. That might occur when a payment is significantly unusual or uncharacteristic compared to the normal use of the account. And/or if the account activity fits a known pattern of fraud.

Nationwide argues no fraud took place as the payments were sent to Mrs G's own cryptocurrency wallet. But that's common in cryptocurrency scams. Victims tend to send funds via genuine merchants, to purchase cryptocurrency for their 'investment'. The regulator and Action Fraud has warned about this dating back to mid-2018. So this is something I would expect Nationwide to have been aware of, and factored into its anti-fraud measures, at the time of these payments.

Moreover, I am satisfied the payments resulted in Mr and Mrs G incurring harm from financial fraud. Mrs G has provided extensive records to support this. Her cryptocurrency wallet shows the payments she made from Nationwide being credited – and then very promptly moved on. She has shown us records of S's platform, which she sent the funds on to. And she's provided a record of her contact with the other platform she was directed to send fund to later in the scam, allegedly to withdraw her profits, confirming she doesn't have access to that account.

Mrs G's explanation of what occurred is also consistent with how these scams tend to unfold. S told her she needed to keep loading funds to make a withdrawal. As Nationwide will know, a legitimate trader wouldn't require this.

As I think Mrs G fell victim to a scam, what I'm considering is whether Nationwide should have been on notice that she was at risk. And, if so, whether appropriate anti-fraud action would have prevented any fraudulent losses she incurred.

Relevant to this is the order in which the card payments were requested. Based on Nationwide's response to my provisional decision, I am using the order they appear on the statements – as Nationwide has accepted this, and it leads to an earlier intervention point.

Nationwide order and statement date	Amount
Payment one: 27 June 2022	£509.76
Payment two: 29 June 2022	£72.41
Payment three: 29 June 2022	£1,700.00
Payment four: 29 June 2022	£734.16
Payment five: 29 June 2022	£26.66
Payment six: 30 June 2022	£3,856.12
Payment seven: 1 July 2022	£205.00
Payment eight: 1 July 2022	£550.00
Payment nine: 1 July 2022	£1,698.35
Payment ten: 1 July 2022	£60.00
Payment eleven: 2 July 2022	£169.21
Payment twelve: 2 July 2022	£4,050.00
Payment thirteen: 4 July 2022	£330.00
Payment fourteen: 4 July 2022	£220.00
Payment fifteen: 5 July 2022	£215.00
Payment sixteen: 6 July 2022	£210.00
TOTAL	£14,096.91

I've considered how the account was used prior to these payments. For a long period, it was largely inactive. There were a few small transactions in early 2022. Then in May 2022, around £36,000 was paid in – seemingly from Mrs G's pension. Around £17,500 of this was moved out to bank accounts in Mrs G's name. And there was a transaction of £1,393 which looks as though it was a car purchase. The remaining balance was in the region of £17,500.

Then, in June 2022, the cryptocurrency payments start – with a few lower payments made in between. The most significant is a payment of just over £2,000, again to Mrs G's account.

Taking an overall view of the account activity, I think the cryptocurrency payments did present a clear indication that Mr and Mrs G might be at risk from fraud. It was a significant change in the operation of the account. They had never made cryptocurrency payments before, and the other payments were largely transfers to other bank accounts they held. To send such a high volume of payments for such a high overall value within a week or so looked uncharacteristic – and symptomatic of a cryptocurrency scam.

I don't think Nationwide had cause for concern immediately. Customers can, and do, elect to pay genuine cryptocurrency merchants for legitimate reasons. But I think there came a point at which it should have reached out to Mr and Mrs G, to find out more about what they were doing – to assess whether they were at risk of foreseeable financial harm from fraud.

I think Nationwide ought to have intervened on the seventh payment. By that point, Mrs G had been making a high number of cryptocurrency payments on concurrent days - including several on the same day – and for a significant amount.

I appreciate Mr and Mrs G think the intervention should have happened on payment six. Drawing a line on exactly when this should have happened is a difficult judgment call. I'm satisfied my conclusion that the seventh payment is when Nationwide should have intervened is reasonable.

I don't think the first scam payment (around £500) appeared particularly concerning. Two days later, a series of cryptocurrency payments were made in one day. The value of which was around £2,500. The gap after payment one means Mrs G had time to stop and deliberate on whether to proceed. I don't think the amount sent on 29 June warranted intervention given this timing, the overall account use, and the value of the payments.

Nor do I think Nationwide is at fault for not intervening on the sixth payment – made the next day, at slightly under £4,000. It was the only payment that day and, although an increase, I don't consider it a substantial increase. But when Mrs G continued to make further payments of this type for the third day in a row, and had sent over £7,000 overall, I do think the value and volume of payments warranted intervention.

If Nationwide had reached out to Mr and Mrs G to find out more about the circumstances of the payment, I think it would have realised they were falling victim to a scam - bearing in mind it will be more familiar with the characteristics of cryptocurrency scams than the average person. I've seen no indication Mrs G wouldn't have been upfront about what she was doing if asked; she thought the trader was genuine, and her contact with S shows no indication she was instructed to lie if questioned about the payments.

The pattern of finding the trader on social media and being directed to set up a cryptocurrency wallet to send funds on to another platform would have sounded suspicious. Nationwide could have warned Mrs G of this, and advised her to contact her nephew in another way - given it will know how scammers use hacked accounts to promote themselves. And so I think it's likely that appropriate intervention would have uncovered the scam and prevented further fraudulent losses from being incurred.

For these reasons, I consider it fair to hold Nationwide liable for the loss incurred from the point at which I think it should have intervened (so from payment seven). I know Mr and Mrs G have questioned why I'm not recommending a refund covering all the scam payments. But it wouldn't be fair to expect Nationwide to reimburse them for losses which I don't think are attributable to its failings. I have explained above why I don't hold Nationwide at fault for processing the first six scam payments.

I've also considered whether Mr and Mrs G should share any liability for the preventable loss by way of contributory negligence. I do appreciate this was a sophisticated scam involving a fake trading platform. But overall, I do think it's fair to expect Mr and Mrs G to share some liability for the following reasons:

- I think there were some missed warnings signs from Mrs G's interactions with the scammers. For example, the name she corresponded with them under was somewhat different to the website/platform address she sent the funds to. It seems they originally provided an address matching their name. Mrs G responded that this generated a "deceptive website warning". The scammers then provided a different website address that was somewhat different to their name.
- It doesn't seem Mrs G gave much challenge or question to why the name had changed, or why they had originally provided a link to a website identified as deceptive. She also sent several payments to allow her to withdraw funds, even though this hadn't worked multiple times.

- This was also a very significant amount of money to invest. And the nature of trading S claimed to be providing is unregulated and high risk. Mrs G's interactions with the scammers suggest she didn't have much knowledge about this type of investment. Yet she proceeded to send a lot of money to S's platform despite the warning signs. By not looking into safer options for the funds, or taking further steps to verify the merchant, that contributed to the loss incurred.
- I have considered what Mrs G has told us about her circumstances at the time. These are factors she told us about prior to my provisional decision, and which I had considered when making my findings. While I appreciate the difficulty of Mrs G's situation, I still think it's fair to expect her (and Mr G, as the joint account holder) to share liability. I think there were further steps she could have taken to protect herself which could have lessened, or avoided, the fraudulent losses.

Overall, for the loss I think Nationwide ought to have prevented, I think it would be fair for Mr and Mrs G to share 50% liability – and for Nationwide to refund the other 50%. Nationwide should pay interest on top of this to compensate them for the loss of use of the funds.

While Mr and Mrs G have questioned why Nationwide has said it will deduct tax from the interest award, interest is normally taxable as income. But that may depend on their individual income tax position. So, as my award explains, Nationwide should make any deduction clear, and provide a tax deduction certificate if requested, so Mr and Mrs G can make any further enquires with HM Revenue & Customs if necessary.

For those payments which I've found Nationwide isn't at fault for, I don't think it could have recovered the loss. The funds were moved on from the platform they were sent to, and the merchant provided the expected service by loading and exchanging the funds. So there wouldn't be grounds to charge back the payments from that merchant.

I can't see the compensation for the delay ordering a new card has been disputed. The delay doesn't appear to have left Mr and Mrs G at risk, as the scammers didn't know their card details. Nor can I see the delay caused them much avoidable trouble and upset. So I'm not directing Nationwide to do anything more to address this issue.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. To put things right, Nationwide Building Society must refund 50% of Mr and Mrs G's loss from the seventh scam payment onwards. And it should pay 8% interest on that amount, running from the dates of payment to the date of settlement.

If Nationwide Building Society considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs G how much it's taken off. It should also give Mr and Mrs G a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 29 December 2023.

Rachel Loughlin
Ombudsman