

The complaint

Ms C is unhappy that Nationwide Building Society (“Nationwide”) has not refunded her in full after she became the victim of a romance scam.

What happened

I’m not going to cover all the points raised in detail. The view of 22 September 2023 covered the details of Ms C’s testimony. But in summary in May 2019 Ms C fell victim to a romance scam. Between 14 May 2019 and 19 August 2019 Ms C transferred a total of £84,800 to the scammer’s account (scam one). On 12 September 2019 Nationwide stopped a payment for £1,500 and blocked Ms C’s account. In March 2020, Ms C’s account was unblocked.

Between 2 April 2021 and 21 March 2022 Ms C made a total of £22,239.70 to genuine cryptocurrency accounts in her own name and funds were then forwarded to the scammer from there (scam two).

In 2022 Nationwide refunded 50% of Ms C’s losses from scam one. However, it considered it wasn’t liable for the payments to cryptocurrency – as these transfers were to accounts in Ms C’s own name and the loss happened from there.

Our investigator did not uphold the complaint. She concluded that any intervention from Nationwide would not have made a difference.

I issued my provisional decision on 9 November 2023. Ms C accepted my decision. Nationwide did not. It said:

- It first made Ms C aware of its scam concerns in September 2019 when her account was blocked. Whilst it can’t evidence that the Banking Protocol was carried out, Ms C was in branch when an analyst told branch staff this was required. Ms C refers to speaking to the police.
- It did block Ms C’s account for six months and whilst it accepts the questioning and scam education on the call before the blocks were removed were not sufficient, Ms C knew Nationwide’s concerns and she acknowledged she was the victim of a scam but continued to send money to the scammer. Ms C did this by sending money via her other bank account and via cryptocurrency presumably as she thought it was less likely to flag with Nationwide.
- Despite knowing that Nationwide held concerns, Ms C continued to send money, putting herself at financial detriment. Ms C sent a further £22,239 via the crypto account and £76,108 to her other bank account and then most, if not all, on to the scammer, in addition to any funds she sent which originated from her other bank account.
- Ms C’s other bank refunded part or all of her losses - implying it was also at fault. These payments would also have been a contributory factor towards the overall impact this scam had had on Ms C and her family.
- If Ms C had to sell her house to pay debts as a result of sending money to the

scammer, why did she send further money when this must have put a significant strain on her finances.

- I noted in my provisional decision that the scammer was the cause of Ms C's loss and impact. It can't know Ms C's condition or her daughter's condition were due to Nationwide not refunding her in 2019.
- As highlighted in the decision there were multiple red flags. Before continuing to make the payments, her account was blocked for six months which is a significant amount of time and should have highlighted the strength of its concern.
- Ms C wanted to continue making payments, ignoring concerns from Nationwide and her family, misleading Nationwide in order to have blocks removed from her account and changing the account she sent the money from in order to avoid detection. As such it believes it's unlikely that any further education in 2019 or 2020 would have stopped the ongoing payments.
- Had it refunded £42,400 in 2019, as Ms C was still under the spell of the scammer, she likely would have experienced more losses, as further funds could have been sent.
- It's not clear enough to say that Nationwide's actions alone have caused Ms C to be defrauded a second time or that Nationwide's actions alone have caused the significant level of distress Ms C has sadly found herself in.

What I've decided – and why

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I have considered Nationwide's further comments and responded to those points I consider material to this decision within my final decision. Overall, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint in part.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

I am so sorry to hear all that has happened to Ms C – not just the scam itself but also her financial and health situation too and the impact all of this is having on her.

There is no dispute that Ms C has been a victim of a scam and I am deeply sorry for that, but it doesn't automatically mean Nationwide is liable for some or all of her losses. In fact, the relevant regulations (and the terms of her account) make her responsible for payments she's made herself in the first instance.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Ms C authorised the payments.

However, where a customer makes a payment as a consequence of the actions of a

fraudster, it may sometimes be fair and reasonable for the bank or building society to reimburse the customer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered the Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) Nationwide has signed up to. Where payments aren't covered by the Code (the first three transactions on scam one predate the CRM Code and payments under scam two are not covered), I've considered Nationwide's wider obligations outside the CRM Code to protect Ms C from the possibility of financial harm from fraud.

Scam one

Nationwide accepted 50% responsibility for the payments in scam one. The first three payments are not covered by the CRM Code but Nationwide still had obligations to be on the lookout for signs of financial harm.

Nationwide concluded that *'the payments were consistently high and would have been unusual spend for the member'*. I agree the activity was unusual for the account – which historically (throughout 2019) had not had such large credits and debits entering or exiting the account. As Nationwide considers intervention should have happened from the outset, interest should be from the date of each transaction and not from the date of claim as Nationwide has confirmed it has done.

Did Ms C have a reasonable basis for belief or could Ms C have done more to mitigate her losses?

Nationwide has only refunded 50% of the transactions. It feels that one of the exceptions to reimbursement under the CRM Code applies or that Ms C could have done more to prevent her losses.

One such circumstance in which a bank or building society might decline a full refund is, if it can be demonstrated that the customer made the payments without having a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

Similarly, outside of the CRM Code it may be fair and reasonable for a deduction to be made if the consumer could have done more to mitigate their losses.

I need to consider not just whether Ms C believed she was sending money to help someone she thought she was in a relationship with but whether it was reasonable for her to do so. I've thought about the steps Ms C took to reassure herself about the legitimacy of the transactions and whether it was reasonable for her to proceed with the payments.

Ms C ultimately placed a lot of trust in a stranger who she had never met (and had only recently met online). I consider that Ms C ought to have had greater concerns and that, in turn, ought to have led to a greater degree of scrutiny on her part. Sending money to someone you haven't met in person was always a big risk. Ms C would have had time between messages to reflect on what was being asked of her. Some of the requests seem strange and it seems Ms C's own father started to question the situation and the amount of money needed seemed to be changing from one email to another. Promises of returned funds were not forthcoming. Ms C wasn't, in my view, under immediate pressure to proceed with the various payments and had time to check things out further.

My intention is not to further Ms C's distress where she's already been the victim of a cruel fraud. But merely to highlight that I do find Nationwide has been able to demonstrate that she could have done more to verify the validity of the person she was communicating with and the proposals they were making. And this would have ultimately prevented her own losses.

Delay in paying scam one

Nationwide has not been able to explain why the case for scam one was not concluded in 2019. It's internal investigation notes suggest "*This case was deemed a customer loss because-Deliver - 07/11/2019.*" If it did reach an outcome that it wasn't liable – this does not appear to have been communicated with Ms C at that time and she certainly wasn't given a formal final response letter or opportunity to appeal Nationwide's decision to decline her claim.

On 31 December 2019, during a telephone call, Ms C asked Nationwide about being able to claim for an APP scam. The call handler told Ms C she is liable as she made the payments. But as Nationwide knows – that is not the end of the story - as banks and building societies have wider obligations; not least because Nationwide is signed up to the CRM Code. Ms C's question about being able to make a claim during this call was not adequately responded to or answered.

Nationwide reached a different conclusion in 2022 and accepted 50% responsibility here. I think that was a fair and reasonable conclusion to reach but I think it ought to have reached this conclusion in 2019.

When Nationwide did intervene, did it do enough?

I appreciate some scam education seems to have been carried out with Ms C following the blocking of her account in 2019. I say this because there is some indication that the incredibly strong spell she was under may have been broken - as she acknowledged in a couple of the calls that she understood and said she wouldn't make further payments.

But I think the spell was strong and Nationwide only needs to revisit the call of 17 September 2019 to hear that Ms C genuinely believed the story she had been given by the scammer (and freely relayed to Nationwide) and was firmly under the scammer's spell at this point. It was clear to Nationwide this story was a typical romance scam scenario as during the same call there is an internal conversation with the fraud department where the certainty this was a scam was acknowledged. During this call, the call handler did not relay the fraud department's concerns or provide any warnings, nor did the fraud department offer to speak directly to Ms C to see if they could break the spell. Instead - it was left for Ms C to go to branch (as I understand it – so that the Banking Protocol could be evoked).

Nationwide accepts it should have invoked the Banking Protocol and accepts it can't evidence this was done. I have revisited the evidence including the call with Ms C on 14 November 2019 and I think it is possible it was invoked the previous day on 13 November 2019 (although internal investigation notes contradict that this happened):

Despite a request for banking protocol on the 5th November 2019 (the need for this reiterated on 13th November 2019), to be actioned prior to online banking blocks being lifted, there is no evidence we have likely missed the opportunity early on, to intervene with the member during a time when she was extremely susceptible to further and/or continued exploitation. In addition, we have not offered sufficient education and reaffirmation to the dangers and prevalence of romance scams during this time to satisfy that this took place.

It does seem however, from Ms C's own comment during this call – there was a police visit. Whether this was part of the Banking Protocol or because she had reported the matter to Action Fraud – is unclear. That said, it was another four months before Ms C called to ask for her account to be unblocked and - at this critical point - Nationwide accept that *insufficient questions and scam education were carried out before unblocking the consumer's account*.

Even if Banking Protocol had been invoked, I think what happened in the intervening period (between 13 November 2019 and 19 March 2020) is crucial to the outcome of this case.

Evidence of financial vulnerability in 2019

I appreciate Nationwide have subsequently refunded Ms C 50% of her losses from 2019 on the basis that it did not do enough. But I think Nationwide's inaction left Ms C vulnerable to the subsequent scam in 2021 - and Nationwide's own internal evaluation quoted above recognises that.

During calls throughout November 2019 and December 2019, Ms C was in 'financial crisis'. In response to my provisional decision, Nationwide has not commented at all on the financial crisis alarms which Ms C raised with it during these calls whilst the account was blocked. In particular I noted in my provisional decision that she had told Nationwide her "*financial situation is at a crisis*" and she was "*not able to pay bills*". This was a vulnerability I think Nationwide has underestimated.

In addition, Nationwide compounded this vulnerability by not adequately dealing with her claim at the relevant time. This further exacerbated Ms C's financial crisis. Ms C has said her account only remained blocked for six months because Nationwide forgot about her. I have to say – I have some sympathy with her strength of feeling about that. From what I have seen there was no contact between her 'financial crisis' call on 31 December 2019 and the call on 19 March 2020 asking for her account to be unblocked.

Ms C was vulnerable not only because she had already fallen victim to a romance scam, but she was in financial difficulty. This left her even more vulnerable and desperate to get her money back.

Nationwide were aware or ought reasonably to have been aware that Ms C was extremely vulnerable and was at risk of falling victim to a further scam or even back into the scammer's hands - as she ultimately did.

In my view Nationwide not only ought reasonably to have been aware of those vulnerabilities – it actually compounded them and consequently left her open to further exploitation. I think Nationwide has underestimated the impact of this.

In particular it added to those vulnerabilities by:

- not sufficiently questioning and providing scam education before unblocking the account. Given the lapse in time and doubt over whether it did carry out the Banking Protocol– it needed to do much more to satisfy itself of Ms C's position/understanding before unblocking her account.

It also exacerbated Ms C's financial vulnerability by

- not responding to her cries for financial help
- not refunding her in 2019 (or at the very least communicating its decision to fully decline the case thereby allowing her to appeal that decision)

Scam two

I don't intend to consider the funds transferred to Ms C's other bank account. I am aware there has been a refund by her other bank for some or all of Ms C's losses relating to the scam. But I don't think that automatically means Nationwide shouldn't be on the lookout for signs that Ms C might be at continued risk of financial harm - especially knowing what it knew about her vulnerabilities at this point and more generally its knowledge of romance scams. I think transferring money to an account in one's own name elsewhere is a potential sign. As Nationwide know – this is a tactic by vulnerable victims to avoid detection and Nationwide ought to have been alert to that possibility here. That said, I wouldn't expect Nationwide to get involved in every transaction and the transactions to her other bank account weren't particularly large or unusual.

Cryptocurrency transactions

I appreciate the losses did not occur directly from Ms C's Nationwide account and these transactions aren't covered by the CRM Code. But Nationwide has wider obligations outside of the CRM Code. So, I don't agree that Nationwide is not liable simply because the money was transferred to a cryptocurrency account in Ms C's name and the fraud then happened from there.

Nationwide had a responsibility to be on the lookout for unusual activity and protect consumers from financial harm. As a financial services professional, I think Nationwide would have been aware at the time that fraudsters use genuine firms offering cryptocurrency as a way of defrauding customers and that these scams often involve money passing through more than one account. Cryptocurrency scams had been increasing in frequency and both the Financial Conduct Authority (FCA) and Action Fraud had published specific warnings about these scams in 2018. In my view, by the time of these transactions, Nationwide had had time to understand these warnings and be on the lookout for fraud using cryptocurrency.

This - coupled with what it already knew about Ms C; her extremely vulnerable state which left her exposed to falling victim to further scams - I think was something Nationwide ought very much to have been alert to and concerned about and it ought to have stepped in to prevent further losses.

Ms C says that if Nationwide had acted accordingly in 2019 and refunded her the 50% of her loss as it did in 2022, the events that occurred after this time would not have happened. She says she would not have had to sell her house to pay debts. She says she might not have suffered from Multiple Sclerosis (a condition she believes is triggered by stress). And she says she would not have continued to give this person money on their promise that she would get it all back. It is clear to me from all that she has said that her actions that followed were a desperate attempt 'to get her life and home back'.

Whilst there may have been other contributory factors here, in terms of the cryptocurrency losses – these do (in my view) stem predominately from Nationwide's inactions as highlighted in detail above. In particular it was aware Ms C was vulnerable and it compounded that vulnerability – exposing her to further exploitation.

I therefore feel it is fair and reasonable for Nationwide to refund all the transactions from Ms C's Nationwide account that were made to cryptocurrency.

I think it's more likely than not that these transactions would not have occurred had Nationwide not left Ms C vulnerable to falling back into the scammer's hands by its inaction

in 2019.

Ms C queried the cryptocurrency transactions the investigator originally considered. I have been through the bank statements, and I outlined all the transactions in question in my provisional decision. There were two credits which came from fraudulent funds which should be deducted. This totalled £19,824.70. Neither party has disputed this.

Distress and convenience

Deciding on an award of compensation for distress and inconvenience, isn't an exact science. And I don't have the power to make a punitive award against Nationwide. It is also not intended to compensate for any actual financial loss a consumer has experienced. As a consequence of these scams, Ms C says she has been disowned by her parents, her daughter is suffering from an eating disorder and Ms C herself has Multiple Sclerosis which she considers to be due to the stress caused by these events. Ms C feels Nationwide turned its back on her four years ago. Ms C says she has had to sell her property to repay debts and is now homeless. Nationwide's own 2022 fraud notes indicate it was aware of Ms C's severe vulnerabilities and I do think Nationwide is accountable for some of the impact all of this has had on her.

But I need to carefully consider the impact Nationwide's mistakes have made, not those of the other parties involved here. Most significantly, this means attempting to discount the actions of the fraudster, who was ultimately the party who committed this fraud on Ms C and, as such, was the direct cause of Ms C's losses and the subsequent impact.

I do think this is a case where Nationwide's mistakes have caused sustained distress to Ms C, exacerbated her financial difficulties and potentially affected Ms C's health – all of which has caused severe disruption to her life over the last four years. In view of the circumstances of this case I think an award of £3,000 fairly reflects the impact Nationwide's inactions have had on Ms C.

I have noted Nationwide's response to my provisional decision, but I had, before issuing my decision, already taken into account that more than one party was involved here – that had already factored into my decision making. There were other parties involved – not least the scammer himself and Ms C's other bank. So, I'm not changing the amount I'm awarding for distress and inconvenience.

Ms C does mention wanting an apology – this is not something I can award but it is a request I'd like to make to Nationwide.

Putting things right

Nationwide Building Society needs to put things right for Ms C as follows:

- Amend the interest it paid on scam one to reflect that in 2022 8% simple interest¹ should have been paid from the date of each transaction to date of settlement in 2022. The difference between this figure and what was actually paid in interest in 2022 represents a crystallised loss from 2022. 8% simple interest¹ should then be added to the crystallised loss in 2022 to the date of final settlement.
- Refund all the transactions to cryptocurrency less two transactions that came from fraudsters/weren't Ms C's funds – so £19,824.70. Nationwide should also pay simple

¹ If Nationwide is legally required to deduct tax from the interest it should send Ms C a tax deduction certificate so she can claim it back from HMRC if appropriate.

interest on that sum at 8% per annum from the date of loss to the date of refund¹. This is because Ms C has been deprived of these funds as a result of the scam.

- Pay £3,000 for the distress and inconvenience this matter has caused.

I am also asking Nationwide to apologise to Ms C.

My final decision

My final decision is I uphold this complaint in part and I require Nationwide Building Society to put things right for Ms C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 2 January 2024.

Kathryn Milne
Ombudsman