

The complaint

Mr B and Mrs C complain that Nationwide Building Society won't refund the money they lost when they were the victims of a scam.

What happened

Around mid-2022, Mr B and Mrs C had spoken to friends who had invested in cryptocurrency and were interested in doing so themselves. They searched online and came across an investment company they thought looked genuine, so filled in their details on the company's website. They then received a call from someone who said they worked for the investment company and talked them through opening an account and how to pay money into their investment.

Mr B and Mrs C then made a series of payments from a number of different accounts into a new account the company helped them open with another bank, and then on to a cryptocurrency exchange. And this included a payment of £25,000 made in branch from their joint Nationwide account in August 2022.

Unfortunately, we now know the investment company was a scam.

After the scam was uncovered, Mr B and Mrs C reported the payment they had made to Nationwide and asked it to refund the money they had lost. But Nationwide didn't agree to refund the money, so Mr B and Mrs C referred a complaint to our service.

One of our investigators looked at the complaint. They thought Nationwide should have been concerned about the payment and done more to protect Mr B and Mrs C before allowing it to go through. But they also thought Mr B and Mrs C should bear some responsibility too. So they recommended Nationwide refund 50% of the payment. Nationwide disagreed with our investigator, so the complaint has been passed to me.

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.

Did Nationwide do enough to protect Mr B and Mrs C?

Banks are expected to make payments in line with their customers' instructions. And Mr B and Mrs C accept they made the payment here. So while I recognise they didn't intend for the money to go to scammers, they did authorise the payment. And so the starting position in law is that Nationwide was obliged to follow their instructions and make the payment. So Mr B and Mrs C aren't automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think Nationwide should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

And so I've also considered whether Nationwide should have identified that Mr B and Mrs C were potentially at risk of fraud as a result of this payment.

The payment was for what I consider to be a significant amount of money. It was for a significantly larger amount than any other payment made out of the account in the previous months. And it used up a significant proportion of the available balance in the account. So I think Nationwide should have identified that Mr B and Mrs C could be at risk of financial harm from fraud as a result of it, and carried out additional checks before allowing it to go through.

It's not for our service to dictate the checks Nationwide should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the size of this payment, I think it would be reasonable to expect those checks to include questions about the purpose of the payment and then follow-up questions about the purpose of the payment Mr B and Mrs C then gave.

As the payment was made in branch, Nationwide has sent us a copy of the form that was filled in at the time. It's also said Mr B and Mrs C were asked about the payment and said it was for home improvements and that they hadn't received any instructions about making it. And it's said it could see the payment was going to an account in Mr B's own name and that Mr B and Mrs C were read a warning that they shouldn't make the payment if they had been contacted unexpectedly or told their account was at risk.

But I don't think these checks or warnings went far enough to address the risk I think Nationwide should have identified. The form that was filled in doesn't mention anything about possible scams. The warning Nationwide says Mr B and Mrs C were given wasn't specific or relevant to their circumstances. And the explanation for the payment Nationwide was given was vague.

Given the size of the payment, I don't think Nationwide should have been satisfied with the explanation of 'home improvements' and should have asked further follow-up questions to get more detail and satisfy itself that Mr B and Mrs C weren't the victims of a scam.

I appreciate that Mr B and Mrs C misled it about the purpose of the payment, as it was for an investment rather than for home improvements. But I've not seen anything to suggest Mr B and Mrs C were given a significant cover story or coached through making the payment – they were just told not to say it was for cryptocurrency. So I think if Nationwide had asked follow-up questions, they wouldn't have been able to give much more detail about things like what work was being done or details of the builders they were using. And I don't think they

would have been able to give an adequate explanation of why money for home improvements had to be sent to a different account in Mr C's own name.

So, if Nationwide had asked follow-up questions, I think the fact the payment was actually being made to fund an investment would likely have been uncovered. And as there were a number of potential red flags about the investment, such as the investment company not being regulated by the Financial Conduct Authority and Mr B and Mrs C not having direct access to their funds, I think the scam would then have been uncovered too.

I also think if Nationwide's warnings had been clearer – for example, saying that a genuine business would never ask you to mislead your bank about the purpose for a payment – then this could also have uncovered the scam.

So if Nationwide had done more to try to protect Mr B and Mrs C, as I think it should have, I don't think they would have made this payment or lost this money. So I think Nationwide should bear some responsibility for the money they lost.

Nationwide has said the payment was sent to an account with another bank Mr B had access to, before it was then sent on to the scammers. And it argues that this breaks the chain of causation and it wouldn't be fair to hold it responsible. But I don't agree. I think Nationwide would have been in a position to prevent Mr B and Mrs C's loss if it had done what I'd expect. Its responsibilities don't end just because a customer sends funds to another account in their own name. And I think it is foreseeable that Mr B and Mrs C could send funds to another account they had access to before sending them to a scammer, as this is fairly common in scams like this.

So I don't think the payment going to another account Mr B had access to means it would be unfair to hold Nationwide responsible here, and I still think Nationwide should bear some responsibility for the money Mr B and Mrs C lost.

Should Mr B and Mrs C bear some responsibility for their loss?

I've also considered whether Mr B and Mrs C should bear some responsibility for the loss they suffered. And while I appreciate that this was a cruel and sophisticated scam and that the scammers pressured them into making payments, I think there were a number of things about what was happening or what they were told that should have caused them significant concern.

Mr B and Mrs C don't appear to have had a clear understanding of how the investments they were making worked. In their discussions with both Nationwide and our service, there seems to be some confusion about exactly what they were investing in, how the profit was supposed to be generated and why the funds for the investments needed to be sent between several accounts before being sent to the investment company. And, given the amount of money they were investing, I think it's reasonable to expect them to have had more of an understanding of this before sending the money.

They also don't appear to have been sent any documents or paperwork about the investment company or the investments they were making, which I would have expected a legitimate company to provide. So I think this should have caused them some concern.

And they were told some of the investments they were making would more than double in value over just a few days. And I don't think this is a realistic return, particularly with no apparent risk of loss. So I think this should have caused Mr B and Mrs C significant concern that what they were being told was too good to be true.

I appreciate that Mr B and Mrs C checked reviews for the investment company before investing, but I don't think the seemingly genuine information they were given or saw from these reviews should have been enough to overcome the concerns I think they should have had. So I think it would be fair and reasonable for them to bear some responsibility for the loss they suffered.

And so I think it would be fair for Nationwide to refund 50% of the money Mr B and Mrs C lost.

My final decision

For the reasons set out above, I uphold this complaint and require Nationwide Building Society to:

- Refund Mr B and Mrs C 50% of the money they lost – totalling £12,500
- Pay 8% simple interest a year on that refund, from the date of the payment until the date of the refund

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

Alan Millward
Ombudsman