

The complaint and what happened

Mr G complains Nationwide Building Society won't refund money he lost when he fell victim to a scam.

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points and focus on giving reasons for my decision:

- Mr G came across the investment opportunity with Wisebanc when a pop-up advert appeared on his computer. He provided contact details and was called back. He was persuaded to invest a total of £17,809.55 although he received £300 back. Those investments were made using the available balance on his credit card with Nationwide in January and February 2019.
- Mr G realised he had been the victim of a scam when his requests for a withdrawal were continually side-stepped, and when he allowed access to his computer via 'Anydesk' and realised Wisebanc had accessed his account. He immediately stopped the access and ceased trading. He asked Nationwide to reimburse his transactions.
- Nationwide declined to refund the transactions because it said the provisions of S75 of the Consumer Credit Act 1974 didn't apply as they were made to a trading platform.
- Our investigator upheld the complaint. They were satisfied the trader wasn't legitimate because the trader wasn't regulated by the FCA when it ought to have been, and there was a warning about the trader published by the FCA in October 2018 and other jurisdictions. There were also reports in the public domain which added to a bigger picture of this being a scam.
- Nationwide hasn't responded to the view. Despite informing us the matter was in-hand and recently telling us it would respond in a matter of days, it still hasn't done so. Our operational contact team let it know that any cases we had upheld would be referred to an ombudsman after 25 February 2022.

It has been six months since our investigator upheld the complaint and so I'm satisfied Nationwide has had plenty of time to respond to it. The matter has now been referred to me for determination.

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 would like to reassure the parties that although I have only set out the key points above, I have read and considered everything provided. Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- There is no dispute that Mr G authorised the transactions in question; he made the payment using his legitimate security credentials. Whilst Mr G didn't intend for his money to go to fraudsters, he is initially presumed liable for the loss.
- Nationwide is aware of our approach of expecting it to have been monitoring accounts to counter various risks, have systems in place to identify unusual

transactions or other indicators that its customers were at risk of fraud and, in some situations, make additional checks before processing payments, or declined them altogether to protect customers from possible financial harm from fraud. And as explained by the investigator, it's considered good industry practice for firms to have updated watch-lists with types of scams and potential fraudsters and for those watch-lists to be updated and communicated internally to staff within one month of an alert being posted by the FCA or IOSCO (International Organisation of Securities Commission).

- Such an alert should automatically trigger its systems and lead to payments being paused, pending further intervention – such as making enquiries, or giving a scam warning.
- In this case, there was a warning about Wisebanc published on the FCA website on 4 October. There was also an alert published on IOSCO on 2 October 2018 from Ireland. This was over three months before Mr G made his first payment directly to Wisebanc. Given the timing of the alert and when the payments were made, Nationwide ought to have automatically blocked it. It had had time to update and communicate its watch-list between the publication of the warning and the payment being made and it should have properly questioned Mr G before processing the transaction.
- Had Nationwide carried out its due diligence and duties and asked Mr G about the payment, I've no reason to doubt that he would have explained what he was doing. Whilst I accept Nationwide had no duty to protect him from a poor investment choice, or give investment advice, it could have provided information about the steps a customer can take to ensure, as far as is reasonably possible, that they are dealing with a legitimate person – such as checking the payee was authorised with the FCA. And it could have drawn on its own knowledge and information that was within the public domain (as referenced by the investigator) about the high risks associated with this type of trading and the potential for fraud and provided Mr G with a potential scam warning.
- There isn't any persuasive evidence that Nationwide intervened. Had it done so, I'm satisfied Mr G would have looked further into the opportunity, about the investment type in general, whether the trader was regulated here or abroad and noted the various warnings about trading scams. Indeed, it's likely that Mr G would have come across the FCA warning for himself. It follows, that a warning from Nationwide would likely have exposed the scam, and caused him to stop trading and sending further payments, thereby preventing the loss of £17,509.55. I say this being mindful of the immediate action Mr G took when he realised Wisebanc had accessed his account.
- But that isn't the end of the matter. I have also considered whether Mr G should bear some responsibility for the situation in which he finds himself. However, I haven't seen any persuasive evidence to suggest that it was reasonably foreseeable to Mr G that he might be falling victim to a scam. I therefore don't find any compensation should be reduced accordingly.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require Nationwide Building Society to:

- Refund £17,509.55 to Mr G's credit card account and put it in the position it would have been had those payments never been made – including any interest and charges applicable to those.
- Add 8% interest on any repayments Mr G made towards the credit card balance in respect of those transactions, from the date of the payments to the date of settlement, less any lawfully deductible tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 April 2022.

Claire Hopkins
Ombudsman