

## The complaint

Mrs S complains that Nationwide Building Society won't reimburse funds she lost when she fell victim to a scam.

## What happened

Mrs S was looking for an investment opportunity and was subsequently cold called by a business called PrimeOT. She was told if she invested with them, she could make big profits – according to Nationwide's records, 20%. She was attracted by the offer and agreed and was set up with access to a trading platform. In order to invest, payments were required to be made via crypto currency platforms – and she says never actually had accounts with these exchanges, she only accessed them through the PrimeOT website. She was also never allowed to trade on her own, only ever with a PrimeOT broker.

Mrs S made a number of payments onto the platform and she was persuaded by the broker to take out a large loan to continue funding the investment - £88,000. It was after this payment was made that Nationwide had been alerted to a destination account being blacklisted. So it contacted Mrs S about her payments. And it was only as a result of Nationwide's contact, and subsequently seeing a substantial drop in the value of the investment and then not being able to access the website anymore, that Mrs S realised it was a scam.

The transactions were as set out below:

Date	Merchant	Amount	Debit/credit
26 August 2019	e-tech solution	£254.29	Debit – debit card
19 September 2019	Bitstamp	£93.41	Credit
24 September 2019	Coinshype	£700	Debit – debit card
24 September 2019	Coinshype	£4,000	Debit – debit card
26 September 2019	Bitstamp	£31,119.58	Debit - SEPA
16 October 2019	Bitstamp	£24,042.74	Debit - SEPA
14 November 2019	Bitstamp	£93.41	Credit
11 December 2019	Coinshype	£495	Credit
20 December 2019	Polotis OU	£86,417.60	Debit - SEPA
17 January 2020	Bitstamp	£1,449.55	Credit
Total loss		£144,002.53	

Mrs S complained but Nationwide didn't think it had done anything wrong. It said it had provided sufficient warnings when the payments were made, and Mrs S was responsible for ensuring the merchant was legitimate. Nationwide did attempt to recover the money from the receiving bank, but it didn't get a response.

Our investigator considered the complaint and upheld it. She felt the first payment to Bitstamp ought to have triggered Nationwide's fraud alert systems as the payment was out of character for the account. And although the payments were to legitimate cryptocurrency exchanges, the risk to its customer falling victim to a scam ought to have been reasonably foreseeable to it, given the published warnings about cryptocurrency and trading scams. She

was satisfied that if Nationwide had intervened the scam would likely have unravelled. She also considered whether Mrs S had contributed to her loss but found she hadn't.

Nationwide didn't initially respond to the view, and then told us it was part of a wider review into such cases. However, it was told via our operational contact team that any complaint that had been upheld would be put on an ombudsman's desk after 25 February 2022.

On allocation to me, I noted Mrs S had taken out a loan at the suggestion of the scammer. Mrs S has explained the scammers sent her links to loan companies they thought would be willing to provide a loan and she was advised to tell the lender it was for home improvements. She now recognises that wasn't something she ought to have done. Mrs S has also told us during the course of this complaint, that just prior to her falling victim to the scam she had a medical event which had left her vulnerable.

Mrs S also made some credit card payments as a result of this scam, but they have been dealt with separately and are not part of this complaint.

I issued my provisional decision on 16 March 2022. As both parties have responded, the complaint can progress to this final stage. Nationwide has told us that it agrees to the settlement set out in my provisional decision.

Mrs S also accepts the outcome. She has also told us that although she originally received a refund in relation to the credit card transactions, these were re-debited to her account.

Both parties accept my provisional findings and I see no reason alter them; I therefore make them final below. However, I have noted Mrs S's comments about the credit card transactions. If that is something she wants us to investigate, she can let the investigator know. However, if Nationwide's final response in relation to those transactions was issued more than six-months ago, it might be too late to ask us to look into it. The investigator can provide more information about that, if Mrs S wishes to pursue that further.

### **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.

Under regulations, and in accordance with general banking terms and conditions, banks and building societies should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customers as a result.

The payments made by Mrs S were made using her debit card and by SEPA transfer. I therefore conclude these were authorised payments – for which Mrs S is liable, unless there is evidence Nationwide could and should have done more to protect her, which issue I now turn to.

There doesn't appear to be any dispute that Mrs S has fallen victim to a scam. Nationwide received information that the final payee had been blacklisted, a couple of months after the payment was made. And there is a lot of information in the public domain about people who

have had similar experiences to Mrs S that have lost money to a scam with PrimeOT. I consider Nationwide took a positive step in contacting Mrs S about the payment and it was as a result of that Mrs S came to the realisation she had been scammed.

But I do think it should have taken action sooner. Mrs S made a total of six payments from her account, three debit card payments and three SEPA transfers. I agree with the investigator that the first three debit card payments weren't unusual or uncharacteristic for the normal operation of the account, albeit they were to new payees. I therefore don't find that Nationwide ought to have intervened before any of those transactions completed.

However, the first SEPA transfer, of £31,119.58, was a substantial increase in spending such that I do find it was unusual and uncharacteristic. And although Mrs S had received a credit from Bitstamp she had never sent a payment to it. So not only was this a substantial increase in spend, but the payment was to a new, international, payee. I'm satisfied this was so unusual that Nationwide's systems ought to have triggered an alert and the payment paused, pending further intervention – such as making enquiries, or giving a scam warning.

I have considered the payments were being sent to legitimate cryptocurrency exchanges and so seemingly to Mrs S's own accounts with them. And I accept that buying cryptocurrency is a legitimate exercise. But both the FCA and Action Fraud had warned of cryptocurrency exchange and forex trading scams in 2018. And in May 2019 Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something regulated businesses including Nationwide, ought to take notice of. So even if Mrs S had been sending money to her own cryptocurrency exchange accounts, it didn't follow that her money was safe, in her control, or that she wasn't at risk of financial harm due to fraud or a scam. Indeed, in this case, I understand Mrs S never had accounts with the cryptocurrency exchanges herself.

Had Nationwide carried out its due diligence and duties and asked Mrs S about the payment, I've no reason to doubt she would have explained what she was doing. Whilst I accept it had no duty to protect her 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 trader/payee was authorised by the FCA. And it could have drawn on its own knowledge and information that was in the public domain (already referenced) about the high-risk associated with trading and the potential for fraud and provided Mrs S with a potential scam warning. I'm particularly mindful that Mrs S was cold called, typical behaviour for a scammer, but not for a legitimate investment opportunity.

Nationwide has provided evidence that a warning was given although it isn't clear when. I have considered the warning, but it doesn't appear relevant to the situation Mrs S found herself in. For example it refers to common scams including requests to refund overpayments or being told an account is at risk. There was nothing in the warning about investment scams – although I appreciate Mrs S didn't pick 'investment' as the reason for the payment. I don't believe this warning was a sufficient intervention. And I haven't seen anything to show there were any other meaningful interventions. Had it done so, I'm satisfied Mrs S would have looked further into the investment type in general, whether the trader was regulated here or abroad and noted the various warnings about trading scams. I say that bearing in mind that when Nationwide did contact Mrs S, it stopped her in her tracks and led to the realisation she been scammed. I'm satisfied an earlier intervention would likely have exposed the scam, and caused Mrs S to stop trading, thereby preventing further losses. I'm therefore currently minded to find it should reimburse the final three payments.

I have considered that Mrs S took out a loan of £88,000 in order to fund the investment, and thought about whether Nationwide should pay any redress towards the cost of the loan, after

all had it intervened when I think it should have done, then Mrs S wouldn't have taken it out at all. But I don't think it would be have reasonably foreseeable to Nationwide that Mrs S may borrow to invest – lenders don't generally lend for customer's to invest; it isn't considered good financial sense (rarely would the growth in an investment outstrip the interest charged on a loan, for example).

But that isn't the end of the matter. I also need to consider whether Mrs S ought to bear some responsibility for the situation in which she found herself. I have noted that Mrs S did have other investments, as I believe she cashed in about £10,000 during the course of this scam. In light of that, I think being told she could expect returns of 20% ought to have raised suspicions with her – that type of return is rarely possible with legitimate investments, even legitimate trading; it was simply too good to be true. I'm not aware that Mrs S asked any questions about that.

Mrs S also borrowed in order to invest more. When applying for the loan she was told to say it was for home improvements. Mrs S now recognises she shouldn't have done that. But I also think being told to lie should have raised suspicions at the time; if what she was doing was legitimate why would she need to lie about it? I'm not aware of Mrs S challenging this at the time or asking questions to reassure herself about what she was doing.

Finally, Mrs S was investing a substantial sum, particularly over the last three payments. However, I'm not aware that she carried out any due diligence before making those particular payments, or any of them. I haven't seen any evidence that Mrs S carried out any research into the investment, the trader, or the investment type to reassure herself that the opportunity was genuine.

So I do think Mrs S ought to bear some responsibility for her losses and compensation should be reduced accordingly. Ordinarily I would consider 25% to be a fair reduction. However, I am aware that Mrs S had recently suffered a medical event just prior to falling victim to the scam, and I think it fair and reasonable I take that into account, given Mrs S has told us, and I accept, this made her vulnerable and more susceptible to the scam. I'm therefore find a 10% reduction to be fair, given the individual circumstances here.

### **My final decision**

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

- Reimburse £127,421.93 to Mrs S representing the final three payments less 10%; and
- It should add interest at 8% simple per year, 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 Mrs S to accept or reject my decision before 22 April 2022.

Claire Hopkins  
**Ombudsman**