

The complaint

Mrs D complains that Nationwide Building Society ('Nationwide') won't reimburse the money she lost after she fell victim to an investment scam.

Mrs D is being professionally represented but for ease I'll refer to Mrs D throughout.

What happened

In late 2019, Mrs D was looking to invest some of her money. After some online research, Mrs D came across a company I'll refer to as E. After contact with E, Mrs D proceeded to make a payment of £250, as a trial promotion, on 9 January 2020, to the payee details given to her. She received information about the initial investment and said she could see it was increasing. Upon completion of the trial period and to become a full member/client, Mrs D then went ahead and made a further payment of £4,750 on 22 February 2020, to the payee details given to her by E.

Around August 2020, Mrs D realised she'd fallen victim to a scam when her contact attempts weren't responded to and E was uncontactable. Mrs D reported the matter to Action Fraud in October 2020, but the scam wasn't raised with Nationwide until 17 May 2022, as Mrs D said she wasn't aware she could raise this with the bank to investigate. It was only after Mrs D was in contact with the professional representative that she was directed to the bank.

Nationwide investigated Mrs D's fraud claim, and it issued its final response letter in October 2022 not upholding it. Nationwide said when Mrs D set up the new payees when making the payments in 2020, she was provided with a tailored warning. It also didn't think Mrs D had taken reasonable steps to check if the payments were genuine. Nationwide attempted to recover the funds from the receiving banks (the accounts the funds were sent to), but no funds remained.

Mrs D was unhappy with Nationwide's response and referred the complaint to this service. One of our Investigator's looked into the matter and upheld the complaint in part. She didn't think Mrs D had a reasonable basis for belief when making the payments, in particular, she thought there was enough going on that Mrs D ought to have some concerns about the payments she was making.

She didn't think Nationwide needed to provide an effective warning for the initial payment of £250 as she didn't think a scam risk would have been apparent to it. However, she thought the second payment of £4,750 did present an Authorised Push Payment ('APP') scam risk. She considered the warning Nationwide say Mrs D was presented with at the time of making the second payment, but she didn't think this was effective or that Mrs D had ignored an effective warning under the Lending Standards Board's voluntary Contingent Reimbursement Model Code ("the CRM Code").

Overall, she concluded liability for payment two ought to be shared between both parties – that Nationwide should reimburse Mrs D 50% of payment two, along with 8% simple interest.

Nationwide responded and accepted our Investigator's view.

Mrs D didn't accept the Investigator's view. Our Investigator considered Mrs D's further comments, but her view remained unchanged. As no agreement could be reached, the complaint has been referred to me for a 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.

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; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law 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 Mrs D authorised these payments. However, Nationwide has signed up to the CRM Code. Under that code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. There are a limited set of circumstances set out in the code in which a firm can choose not to fully reimburse its customer and Nationwide has argued that two of those exceptions are applicable in this instance.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made.
- The customer made the payment without 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.

**There are further exceptions within the CRM Code, but they do not apply in this case.*

I have carefully considered Nationwide's representations about the warnings it gave and whether Mrs D had a reasonable basis for belief.

I will firstly turn to the representations made about the warnings Nationwide say were presented to Mrs D at the time of making the payments. I am in agreement with our Investigator about payment one. I don't find the payment of £250 presented an APP scam risk and so I don't find Nationwide was required to provide an effective warning under the CRM Code for this payment.

Following our Investigator's view, Nationwide has accepted to reimburse Mrs D 50% of the second payment of £4,750 – accepting 50% liability for this payment. As such, I don't find I need to consider the representations about the warnings for payment two further in this particular case, given that Nationwide has agreed to reimburse 50% of this amount.

However, I note Mrs D's representative has suggested that an intervention beyond a written warning was warranted here and would've made a difference. But I think an effective written warning would've been enough in the circumstances of this case.

With the above in mind, I will now address whether Mrs D had a reasonable basis of belief when making the payments.

Nationwide can decline to pay a refund if Mrs D made the payments without a reasonable basis of belief that the transactions were legitimate. I've considered this point carefully when thinking about both of the payments Mrs D made. Having done so, I'm not persuaded Mrs D had a reasonable basis for believing that the payments she was making were for genuine investments, that the payee was the person she was expecting to pay, and/or that the person or business with whom she transacted with was legitimate. I will now explain why.

Mrs D has said she saw positive reviews about E, albeit potentially for a cloned website. She adds that there was reasonably no way that she would have been aware of this fact. Mrs D has said she carried out her own due diligence by researching E in November 2019. She didn't proceed to invest straightaway and says she looked into E again in January 2020. She says she looked at online reviews as well as on the Financial Conduct Authority (FCA). Mrs D said she could see the company was regulated. She told us this led to her believing the company was genuine.

Unfortunately, it's not been possible to see what Mrs D saw about E in November 2019 when she carried out her research. There has also been some contradictory information provided about the FCA. As set out above, in parts Mrs D has said she checked the FCA and could see E was regulated. Yet in the response to our Investigator's view, it was commented that not all consumers are aware of the FCA website. With this in mind, I've thought carefully about everything I've seen and been told. From my own research, E doesn't appear to be UK FCA regulated but when searching online for E there is an entry from an overseas financial services commission that shows an entry on 3 December 2019 warning about E being a cloned firm. On balance, I'm persuaded it is more likely than not that had Mrs D checked the FCA website she would have seen E didn't appear as UK regulated and, that she would have more likely than not have come across the warning from December 2019 when carrying out her research as she recollects. It follows that I'm persuaded that this ought fairly and reasonably to have been a flag to Mrs D and have led her to proceed more cautiously when making these payments.

I do recognise Mrs D feels strongly that she shouldn't be held 50% liable for the loss on the basis that the information she says she saw in November 2019 can no longer be found. I'd like to assure Mrs D that this is not the case. Simply based on the information available to me, on balance, I think the information she more likely than not would've seen ought to have caused her some concern.

Mrs D made the payments to two different payees, both of which were not in the name of the company she believed she was investing in. Mrs D says she questioned the two different payee names with E, and she was told that the initial payment for the trial/taster period was kept separate from "full members investments". Whilst I recognise Mrs D did enquire about the payee details with E, I think what she was told ought fairly and reasonably to have prompted her to ask further questions and proceed with more caution. While to some extent I can accept that E might have had different accounts for the two different payments (separating the trial period from the full member's payments), that does not explain why neither of the payee details appeared to be connected to the company name with whom she believed she was investing in and was in contact with. I think this ought to have prompted Mrs D to think about what she was plausibly being asked to do.

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Mrs D from proceeding to make the payments. But when taken collectively and considering the specific circumstances of this case and the factors in the round, on balance, I think that there was enough going on and sufficient red flags that Mrs D ought reasonably to have been concerned that things weren't as they seemed.

Overall, I don't think I can fairly conclude that Mrs D had a reasonable basis for believing that she was making payments for a genuine investment, that the payee was the person she was expecting to pay, and/or that the person or business with whom she transacted with was legitimate.

I've also carefully taken into account what Mrs D has said about her circumstances at the time of making the payments. I'd like to assure her that I don't underestimate the impact the whole experience will have had on her and that I've thought carefully about what she's said. But I don't think what I've been told was significant enough to have meant Mrs D couldn't have taken steps to protect herself from the scam she fell victim to.

I want to emphasise though that this is not to diminish the circumstances she was in at the time, or the subsequent impact the scam has had on her. It is simply that I don't find the evidence would justify a finding that Mrs D was unable to have taken further steps to protect herself here.

Recovery of funds

I've also considered whether Nationwide did all it could to try and recover the money Mrs D lost, once she had reported the scam to it. From what I've seen, I'm satisfied Nationwide did what it was expected to do, unfortunately no funds remained. But in any event, I'm mindful that the scam payments were reported to Nationwide in May 2022, which was two years after the payments were made. In these circumstances, given the time that had passed since the scam payments had been made and reporting them, I don't think there was anything more Nationwide could've done to recover Mrs D's funds.

Distress and inconvenience

I'm mindful Mrs D and her representative have referred to a specific amount of compensation she considers fairly reflects the distress and inconvenience caused to her. She has also commented that the bank should indemnify her for any legal costs.

I've thought carefully about what Mrs D has said but I'm mindful that the substantive cause of Mrs D's distress and inconvenience was caused by the fraudster. While Nationwide has accepted equal responsibility with Mrs D for the second payment, she made in respect of the warning provided, I'm satisfied the settlement proposed below puts things right - including the recognition for the time Mrs D has been deprived of her funds. I don't intend to penalise Nationwide for the actions of the fraudster nor Mrs D's decision to instruct professional representatives in this case.

Putting things right

I've decided that both parties ought fairly and reasonably be held liable for the loss of payment two.

To put things right, Nationwide Building Society should now put things right by:

- Reimburse Mrs D 50% of payment two, which I calculate to be £2,375;
- As Mrs D has been deprived of the use of these funds, Nationwide should pay 8% simple interest per year from the date it declined Mrs D's claim under the CRM Code to the date of the settlement.

If Nationwide considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs D how much it's taken off. It should also give Mrs D a tax

deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint in part against Nationwide Building Society.

I direct Nationwide Building Society to pay compensation, as set out above, within 28 days of receiving notification of Mrs D's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 27 October 2023.

Staci Rowland
Ombudsman