

The complaint

Mr K complains that Nationwide Building Society (Nationwide) won't refund the money he lost when he fell victim to a scam.

What happened

Mr K was looking for investment opportunities when he saw a social media advert for an investment company, X. After looking into them, he thought they seemed professional, so decided to invest.

X got Mr K to download remote access software to help him with their trading platform. He started with a £500 investment, paid from his Nationwide account (via a cryptocurrency merchant) in April 2021. He received a credit in September 2021, which he says was a withdrawal from the profits he was making on X's platform.

Between October 2021 and July 2022, Mr K sent further payments on to X to invest. This case concerns payments made from his Nationwide account, exceeding £28,000, sent on to the scam. They were a mix of card payments and transfers to cryptocurrency merchants. There were also three transfers sent to another recipient, S. Several payments were funded by loans. Mr K says X advised him to take out lending to maximise his profits – and on some occasions, they completed the application(s) on his behalf.

At first, Mr K understood his investment was performing well. But towards the end of the scam, X said there had been a market crash and his investment was dropping. He paid in more money to try to recover his profit. But then X stopped contacting him and he realised it was all a scam.

Mr K complained to Nationwide (via a professional representative) that it hadn't done enough to protect him. He said the payments should have been flagged as suspicious. And if Nationwide had therefore asked him about them, the scam would have been uncovered.

Nationwide didn't uphold Mr K's complaint. And, when Mr K referred his complaint to our service, nor did our investigator. She thought Nationwide ought to have done more but wasn't persuaded that would have prevented Mr K's loss. She didn't think Mr K was otherwise due a refund from Nationwide, such as due to a missed recovery opportunity or under the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) code.

Mr K has appealed the investigator's outcome so the case has been passed to me. In summary, he disagrees with the investigator's conclusion that questioning or a warning from Nationwide was unlikely to have prevented him from proceeding. He says, if asked, he would have explained X had instructed him to download and use remote access software to help him access the trading platform. And that would have made it obvious to Nationwide that he was falling victim to a scam.

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 line with the Payment Services Regulations 2017 (PSRs), Nationwide is expected to execute authorised payment instructions without undue delay. It's agreed Mr K authorised the payments he is disputing, albeit he did so due to being tricked by a scam. So the starting position is that he is liable for them.

That said, there are circumstances when it might be appropriate for Nationwide to take additional steps before processing a payment. Such as when there are grounds to suspect the payment presented a fraud risk. That might occur when a payment is significantly unusual or uncharacteristic compared to the normal use of the account. And/or if the account activity fits a known pattern of fraud.

Looking at the payments Mr K is disputing (which I have confirmed with his representative directly), I don't think the first few payments looked so unusual that it was remiss of Nationwide not to flag them for further checks. But I do think it should have identified the £7,000 transfer to S in late 2021 as presenting a fraud risk. The size of the payment appeared unusual within Mr K's normal account activity.

However, I'm not persuaded intervention by Nationwide in response to this would have uncovered the scam. While Mr K says he hadn't been coached on what to say if questioned about the payments, that seems at odds with the following:

- When making the first payment reported as part of the scam, Mr K selected that the payment was for an investment. He was shown a tailored investment scam warning as a result. Given the payment size, I wouldn't have expected Nationwide to have done more. I don't think it was obvious this payment presented a fraud concern.
- Mr K then attempted £2 payment to another cryptocurrency merchant later that same day. It appears this was returned by the merchant, but that it was again done in connection with the scam. When making the payment, Mr K selected the purpose as "item or activity". It seems strange that, of his own volition, he would give a different payment purpose when the purpose was (so far as we've been told) the same as for the previous payment. I don't think the description that he was paying for an "item or activity" seems accurate given we know there was an investment option available, which Mr K had selected for the earlier payment.
- Then, when Mr K made his first payment to S (several months later), he selected he was paying "friends or family". Again, that seems at odds with what he actually thought he was doing/who he was paying - as he says he understood this payment was being loaded to his trading platform. He has since confirmed he did this on the scammer's instructions.

All of this provides an indication Mr K was coached, at least on what payment reasons to select. That indicates he likely was, or would have been, coached on what to say if a payment was paused in order to speak to him directly.

Mr K hasn't given much reasoning as to why he thought he needed to give different payment reasons, except that he was acting on X's instructions. Which leads me to think he would have been open to their influence on what to tell Nationwide – and so would have been prompted to give a cover story to make the actual risk less obvious. This seems more likely in the context of Mr K giving false reasons for the Nationwide loan. He said it was for home improvements, whereas it was actually taken out to fund his investment.

Overall, I'm not persuaded further questioning was likely to have uncovered the scam. It doesn't appear Mr K was honest about the reasons for putting through the £7,000 payment, as he said it was paying friends or family. This leads me to think he wouldn't have been honest if he had spoken to Nationwide directly either.

I do also have concerns about the testimony we have received to support why further intervention would have worked. There seem to be discrepancies in what we have been told about whether Mr K was coached – and on what research he did into X before making these payments. He says he looked X up and didn't find any adverse information. Whereas I've found information online predating these payments suggesting X were a scam.

Overall, I don't have enough confidence in the testimony provided to consider that a fair basis for concluding that further intervention would have unravelled the scam at this point.

I don't think it would have been remiss for Nationwide not to have completed further checks on the remaining scam payments Mr K is complaining about. They appear similar in nature. While the largest was £10,000, by that point Mr K had paid the recipient twice before, with weeks in between the payments, and for other substantial amounts. So by that point, I don't think the payment looked uncharacteristic. And, for the reasons set out above, it's unclear Mr K's responses would have uncovered the scam even if Nationwide had intervened further.

When Nationwide issued its final response, and when our investigator viewed the case, it appeared to accept the payments to S fell under the CRM code. This was on the basis they were UK transfers to another individual (whereas the other scam payments were card payments, and/or payments to Mr K's cryptocurrency wallets and so aren't covered). Nationwide has now queried this, saying the nature of the scam would normally involve payments being made in cryptocurrency (whereas the code only covers payment journeys made in pounds sterling). But looking at the information available about S, I can't see any clear information to suggest they were linked cryptocurrency.

The evidence on point this is limited. But even if the payments are covered by the code – I'm not persuaded Mr K is due a refund. While firms are generally expected to refund victims of APP scams if the payment falls under the scope of the code, there are exceptions it can rely on where it's not expected to refund the customer. One of these is where the customer didn't have a reasonable basis for believing the person he was paying, and/or the services he was expecting, were legitimate.

In all the circumstances, I'm not persuaded Mr K had a reasonable basis for believing the investment was legitimate. There was publicly available information suggesting X was a scam at the relevant time. It also appears Mr K continued investing for a long time, despite X not keeping their promises on what he should receive. And I think it should have been concerning to him that he was repeatedly told to take out loans and to give false reasons for them, and that he was instructed to give misleading payment reasons.

The message exchange I've seen between Mr K and X also shows he was aware they had completed a loan application (with his consent) inflating his salary - and suggested it could provide him with a payslip to back this up if needed. It seems they were offering to provide a fraudulent payslip. Again, this seems like a further warning sign they weren't operating honestly. Yet he continued making payments.

The reasons given for the payments/payees also suggests Nationwide weren't put in a position where they were able to give an effective warning - as it appears Mr K wasn't being honest about what he was doing, selecting that he was paying friends and family. Looking at the payment type and recipient, I can't see Nationwide had grounds to suspect the payment was actually linked to an investment. So, I can't see grounds to hold Nationwide liable under the code.

It doesn't appear Nationwide missed an opportunity to recover the funds either. For those sent as transfers, we know the funds were moved on from the recipient accounts by the nature of the scam. For those sent by card, the funds were sent to legitimate merchants who appear to have provided the expected service. So I don't think the payments could have been recovered through the chargeback scheme.

I appreciate this will be disappointing for Mr K. But in all the circumstances, I'm not persuaded it would be fair to direct Nationwide to refund these payments.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 March 2024.

Rachel Loughlin
Ombudsman