

The complaint

Mr J complains that Nationwide Building Society (“Nationwide”) won’t refund over £57,000 he lost to a cryptocurrency investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mr J fell victim to an investment scam after he was contacted by a scammer (“H”) on social media in May 2021.

Mr J was encouraged to invest and made the following payments from his Nationwide account to his crypto wallet, where his funds were subsequently transferred on to the scammer:

- 18/5/21 – £20 to Cryptopay Ltd (card payment)
- 18/5/21 – £20 to Cryptopay Ltd (card payment)
- 19/5/21 – £10 to Cryptopay Ltd (transfer)
- 20/5/21 – £56 to Cryptopay Ltd (card payment)
- 4/6/21 – £3,600 to Cryptopay Ltd (card payment)
- 23/6/21 - £348 to Cryptopay Ltd (card payment)
- 28/6/21 - £150 to Cryptopay Ltd (card payment)
- 2/7/21– £356 to Cryptopay Ltd (card payment)
- 12/7/21 – £10,000 to Cryptopay Ltd (transfer)
- 14/7/21 – £50 to Cryptopay Ltd (card payment)
- 19/7/21 – £1,100 to Cryptopay Ltd (transfer)
- 20/7/21 – £60 to Cryptopay Ltd (card payment)
- 27/7/21 - £75 to Cryptopay Ltd (card payment)
- 2/8/21 – £10,000 to Cryptopay Ltd (transfer)
- 2/8/21 – £10,000 to Cryptopay Ltd (transfer)
- 2/8/21 – £10,000 to Cryptopay Ltd (transfer)
- 3/8/21 – £4,500 to Cryptopay Ltd (transfer)

- 9/8/21 – £8,250 to Cryptopay Ltd (transfer)

Mr J realised he'd been scammed when he was unable to withdraw his profits in August 2021.

Mr J reported the fraud to Nationwide and asked it to consider reimbursing the money he'd lost. Nationwide agreed that it could have done more to protect Mr J from falling victim to the scam in light of the unusual spending activity on his account and said it should have made further enquiries when he came to make the £3,600 payment on 4 June 2021. It therefore agreed to refund the money lost from this point onwards, albeit with a 50% deduction in recognition of Mr J's own contributory negligence – totalling £28,517.08. Mr J didn't think this was fair, so he referred the matter to our service.

Our investigator didn't uphold the complaint. He thought Nationwide's offer of settlement was fair because he didn't think an intervention by the bank would have ultimately prevented his loss to the scam, given Mr J said he'd carried out extensive research into H before investing with them. Mr J disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and I don't think Nationwide needs to offer anything more to Mr J.

It isn't in dispute that Mr J authorised the disputed payments he made to the cryptocurrency exchange platforms from his Nationwide account (where his funds were subsequently transferred on to the scammers from those platforms). The payments were requested by him using his legitimate security credentials provided by Nationwide, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

Nationwide has accepted that it should have intervened from the £3,600 payment on 4 June 2021. And having reviewed the payments that took place before, I don't think there would've been any cause for the bank to intervene prior to the £3,600 payment, as the transactions were not unusual enough to warrant an intervention. As a result, Nationwide has agreed to refund 50% of the payments made from 4 June 2021 onwards. And having considered all the evidence, I'm satisfied its offer is fair. I'll explain why.

Mr J has explained that he carried out substantive due diligence into H, and that he understood the broker to be operating under the trading name of a company that was FCA registered. He queried various aspects of H's credentials, such as why it was listed as a dormant company but said he was provided with screenshots and evidence from the scammer that assured him it was fully operational and legitimate.

Therefore, if Nationwide had intervened and warned him of a potential scam and told him to carry out further research into H to check its legitimacy, it seems unlikely that this would've ultimately revealed the scam. Mr J said he'd already carried out extensive research into the broker and was convinced of its legitimacy. So, it's hard to see what else Nationwide could have done to break that spell, as it seems there is little else he could have found at the time that would have led him to believe he was being scammed. In such circumstances, a bank wouldn't be expected to refund any of its customer's losses, which is why I don't think Nationwide needs to pay anything over and above what it has already offered.

Even if I were to accept that an intervention *would* have likely prevented any further loss, I'm still satisfied it would be fair for Nationwide to deduct 50% from Mr J's compensation due to his own contributory negligence. Mr J has said that he was guaranteed a return on his investment, where he was told that he would "*get the exact 100%, nothing less*". Any investment broker offering a 100% guaranteed or "risk-free" return on investment should give reasonable cause for concern that it's a scam. Such a promise ought to have seemed too good to be true, but it appears Mr J didn't do anything to independently verify the unrealistic guarantees being made by H and decided to invest regardless.

As a result, I'm satisfied his own actions have contributed to his loss, such that it would be fair for Nationwide to deduct 50% of the money lost in recognition of this if it were accepted that the bank could've prevented the scam, which, as I've set out above, I'm not persuaded it reasonably could've done in these circumstances. So, either way, I don't consider Nationwide would be liable to pay anything further to Mr J than it has already offered.

Mr J's representatives have also made numerous submissions relating to the Contingent Reimbursement Model (CRM Code). However, as they will no doubt be aware, the CRM Code does not apply to card payments or bank transfers made to an account in the customer's own name, so none of the payments Mr J made as part of the scam would fall within the scope of the Code for reimbursement.

I also don't think there was anything more Nationwide could've done to recover the money Mr J lost. In terms of the debit card payments, a chargeback claim would've had little prospect of succeeding given Mr J received the asset he had purchased (i.e. the cryptocurrency). Similarly, for the faster payments, there would've been no prospect of recovering the money from the receiving accounts either, given we know these accounts were controlled by Mr J, who had already transferred the cryptocurrency on to the scammer by the time the fraud had been reported.

I appreciate this will likely come as a disappointment to Mr J, and I'm sorry to hear he has been the victim of a cruel scam. However, I will not be asking Nationwide to take any further action in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 February 2024.

Jack Ferris
Ombudsman