

The complaint

Mr and Mrs W complain that Nationwide Building Society didn't do enough to protect them when Mr W fell victim to an investment scam.

While this case concerns the loss of funds from a joint account owned by both Mr and Mrs W, the payments were instructed by Mr W. He also pursued the subsequent complaint with Nationwide. So, for simplicity I have referred only to Mr W throughout my decision.

What happened

Mr W came across an advert for an investment opportunity with a company, which I'll refer to as "M", via a social media platform. The company offered investments in stocks and shares, and crypto. Reassured that M's company website looked professional and legitimate Mr W made an initial investment of £100. Soon after he was contacted by someone purporting to be an account manager who persuaded Mr W to make further investments. He advised Mr W payments would need to be made in euros, so he advised him to open accounts with two electronic money institutions (EMIs) - which I'll refer to as "W" and "R" - although Mr W already had an account with W.

On 12 and 16 December 2022, Mr W made payments of £4,000 and £2,500 to W. From there Mr W transferred the funds into what he understood was an investment trading platform. In reality, he was transferring the funds into the control of the scammers.

In January 2023, Mr W was persuaded to take out a £10,000 personal loan with Nationwide to enable him to keep investing, as he'd exhausted his personal savings. But when he tried to transfer the funds to W, Nationwide intervened. Mr W told Nationwide he'd taken out the loan to carry out building work at his home but had decided to invest it when his building works were delayed. Nationwide explained that loan funds could not be used for investment purposes, and it was agreed Mr W would repay the loan within the cooling off period.

When Mr W tried to withdraw his funds from the platform he was told it was not possible at the time, and that he would need to invest a further £10,000. Mr W was initially told that M would credit his account with £10,000 as a gesture of goodwill, but he was later told he would need to make further payments himself. To meet the deposit requirements Mr W took out two personal loans with third party banks and borrowed money from a relative. Mr W was also persuaded to download software that allowed the scammer access to and control of his device.

Between 24 January and 7 February 2023 Mr W made a further eight payments to his accounts with W and R. Nationwide intervened again on 7 February 2023, before it processed his payment of £10,000. During this call Mr W said that the payment related to home renovations and that he was transferring it to R so he could make purchases in another currency to save money. He denied he'd been advised by anyone else to make the payments, or that he'd downloaded any software to allow access to his device and said that he was aware of the scam risks.

In total Mr W made or attempted the following payments from his Nationwide account:

Date	Transaction type	Amount
12 December 2022	Transfer to W	£4,000
16 December 2022	Transfer to W	£2,500
14 January 2023	Card payment to R	£20
20 January 2023	Attempted transfer to R	(£10,000 – prevented)
24 January 2023	Card payment to R	£1,300
27 January 2023	Card payment to R	£2,694
28 January 2023	Card payment to W	£2,908.70
28 January 2023	Card payment to W	£3,009
6 February 2023	Transfer to R	£5,500
7 February 2023	Transfer to R	£4,500
7 February 2023	Transfer to R	£10,000
8 February 2023	Transfer to R	(£8,500 – recovered)
	Total loss	£36,431.70

Mr W realised he'd been scammed when he was unable to make a withdrawal despite making further deposits. He contacted Nationwide for help recovering his lost funds and complained that it should have done more to advise him of the risks before allowing him to make the payments. Nationwide was able to stop the final payment of £8,500 leaving his account, but it refused to refund any of the funds lost to the scam. It said the initial payments in December 2022 didn't flag on its system as unusual – it noted Mr W was paying accounts in his own name and he'd previously made payments of a similar size from his account in the past. It said when it did speak with Mr W in January and February 2023, it had provided him with a scam warning, advising that scammers may offer unrealistic returns and they can convince people to take out personal loans based on the belief that they'll be able to make sufficient returns to repay the loan quickly. Despite these warnings, Mr W decided to continue with the payments.

Mr W was unhappy with Nationwide's response and referred a complaint to the Financial Ombudsman Service. He said Nationwide had failed to properly warn him about the risk of fraud and scams.

Our Investigator didn't uphold the complaint. She agreed that the initial payments in December 2022 weren't sufficiently unusual or suspicious that Nationwide should have intervened at an earlier point. She was also satisfied it had acted reasonably and provided Mr W with adequate warnings based on what it knew at the time. She noted that as Mr W had not been honest about the reasons for his payments Nationwide was unable to detect the scam or provide a more tailored warning. As such, she did not think Mr W's loss could reasonably have been prevented.

Mr W disagreed and asked for his complaint to be referred to an Ombudsman for a final decision. In summary he said:

- Nationwide should have intervened when he instructed the first payments in December 2022 as they were out of character for his account. Had it done so he wouldn't have gone ahead with the payments. He said that as he was at the beginning of his relationship with the scammers, he believed the scam could have been uncovered at that point.
- He was genuinely looking to carry out home renovations, and so he hadn't misled Nationwide either when applying for the loan or when speaking with it in January. He said he was also open and honest with it that he planned to invest the loan funds.

- Nationwide missed an opportunity in January 2023 to uncover the scam, as it didn't ask him about his proposed investment and only sought to prevent him from spending the loan funds.
- Nationwide missed a further opportunity to intervene when he later took out other personal loans and transferred them to his account with R, despite him previously advising it of his intention to invest loan funds.

Our Investigator considered Mr W's points but wasn't persuaded to change her mind. She also noted that Nationwide had asked Mr W about his intended investment. Mr W had been asked if he was being advised by anyone, to which he replied "no". He was also advised that scammers often encourage people to take out loans believing they'll be able to make sufficient profit to repay them quickly, but despite this warning Mr W didn't reveal anything about the proposed investment that would have helped Nationwide uncover that he was falling victim to a scam.

In reply, Mr W said as English is not his first language, maybe he had not understood the conversation with Nationwide fully. But given that he was at potentially at higher risk of being scammed he would have expected Nationwide to have adopted an "alternative customer awareness approach", such as inviting him into a local branch or sending him written scam warnings.

The case has now been passed to me to decide.

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'm not upholding this complaint and for largely the same reasons as our Investigator. I realise this will be extremely disappointing to Mr W. I don't underestimate the financial and emotional impact falling victim to this scam has had on him and his family. But for the reasons I'll go on to explain I don't think Nationwide has acted unfairly or unreasonably.

I'm sorry to hear Mr W was the victim of a sophisticated and targeted scam and lost a considerable sum of money as a result. I can appreciate why he wants to do all he can to recover the money he lost. But I can only direct Nationwide to refund his losses if it can fairly and reasonably be held responsible for them.

It is accepted that Mr W authorised each of the scam payments from his Nationwide account. So, although he didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of his account, Mr W is presumed liable for his loss in the first instance. And under the terms and conditions of the account, where a valid payment instruction has been received, Nationwide's obligation is to follow the instructions Mr W provides.

There are, however, circumstances where it might be appropriate for Nationwide to take additional steps or make additional checks before processing a payment in order to help protect its customers from the risk of financial harm from fraud. But Nationwide would only need to intervene and ask more questions about the payment if an instruction was sufficiently unusual or uncharacteristic for the account. Ultimately, there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

So, the starting point for me is to consider whether any of Mr W's payment instruction were particularly unusual or uncharacteristic, taking account of his usual usage.

I've reviewed Mr W's account statements from February 2022 to February 2023 when the scam occurred, which I'm satisfied gives me a reasonable picture of Mr W's usual spending.

While the first two scam payments were not completely in-keeping with his day-to-day spending, I can't reasonably conclude they were sufficiently unusual or suspicious that Nationwide ought to have intervened. I note that Mr W had made several payments ranging from £3,000 to nearly £7,000 in the year before the scam, so it was not unusual for him to move money from his account in the sums that were initially involved in the scam. The payments were also being made to accounts in his own name, which would not on the face of it appear high risk. So, I agree with our Investigator, that there was no requirement for Nationwide to intervene before it processed the first two payments.

Nationwide did intervene, as I would have expected it to, several times when Mr W attempted to make payments of £10,000.

I've listened carefully to calls that took place on 20 and 21 January 2023 and 7 February 2023. Having done so, I'm satisfied that Nationwide asked Mr W appropriate questions to understand the reasons for his payments and to assess if he was potentially at risk of financial harm due to fraud.

Unfortunately, Mr W did not give Nationwide an accurate account of what had happened or what led him to make the payments.

Mr W said the loans had been taken out to finance building work, which had been delayed, and later that he was making payments to his R account to purchase building materials in a different currency. While I accept that Mr W's long-term goal may have been to use his invested funds to finance building works, I'm not persuaded that this was what had motivated him to make the payments in question – particularly given the initial £10,000 loan was applied for the day before Mr W attempted the payment to R. He also said he was not being advised by anyone else and had decided to invest the money himself, which was not accurate as he was being advised by M and the account manager. And when asked if he'd downloaded any software to allow anyone else access to his device, he said "no".

Nevertheless, Nationwide's advisers provided Mr W with appropriate warnings relevant to the facts as it understood them at the time. In all calls Mr W was advised he was speaking with fraud professionals who were trying to protect him from falling victim to any potential scams. He was asked to be completely honest in his answers to help Nationwide protect him from potential financial loss and warned that if he went ahead, he would be liable for his losses. In the first call, Mr W was warned that he would be acting in breach of the loan terms and conditions if he invested the loan funds. He was also specifically warned that scammers often suggest scam victims take out loans on the promise that they will "double or triple" their money and then be able to repay the loan quickly, but that in reality this just results in a greater loss to the victim. Despite this closely mirroring what he'd been told, Mr W did not heed this warning when he was later persuaded to take out a further loan to finance his investment.

While Mr W has suggested, in hindsight, he may not have fully understood what he was being told in these calls, I'm satisfied Mr W was able to engage fully during all conversations I listened to. He was able to listen to and respond appropriately, and in detail, to the questions he was asked. I've seen no evidence to suggest that Mr W informed Nationwide of any additional support he would need with communication. And so, I'm satisfied Nationwide acted reasonably in its dealings with Mr W over the phone, and I do not agree it was

necessary in the circumstances for it to have asked him to attend a branch or anything else. And even if it had I'm not persuaded it would have made a difference.

Overall, I'm satisfied that Nationwide took appropriate steps to warn Mr W about the risk of scams, including highlighting features I would have expected to particularly resonate with him (i.e. the use of loan funds to finance investments). Despite this Mr W carried on with the payments. In the circumstances, I consider Nationwide acted reasonably in processing Mr W's valid payment instructions. As a result, I can't reasonably conclude that it could or should have prevented his loss.

Having been alerted to the scam, Nationwide was able to prevent Mr W's final payment leaving his account. I don't think it needed to do anything further in terms of attempting to recover his funds as all payments had been made to accounts held in Mr W's name and control. As such, had any funds remained Mr W would already have had access to them.

In conclusion, I have a great deal of sympathy with Mr W being the victim of what was clearly a cruel scam. But it would only be fair for me to direct Nationwide to refund his loss if I thought it was responsible for it – and I'm not persuaded that this was the case. Everything considered, I cannot fairly and reasonably hold Nationwide liable in these circumstances. It follows that I will not be asking it to take any further action.

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 W and Mrs W to accept or reject my decision before 5 October 2023.

Lisa De Noronha
Ombudsman