

The complaint

Mrs L complains that Nationwide Building Society hasn't protected her from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, through August to October 2021 Mrs L made 29 payments from her Nationwide account to fund what she thought was a legitimate investment. She made the payments from her Nationwide account first to her Wise account, before moving them on from there to the scammers. The payments totalled £132,143.06.

Mrs L subsequently realised she'd been scammed and got in touch with Nationwide. Ultimately, Nationwide didn't reimburse Mrs L's lost funds, and she referred her complaint about Nationwide to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Mrs L and Nationwide my provisional decision earlier this month, explaining what I was minded to decide. Both parties have responded, and I'm now ready to explain my 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.

Having done so, I've reached the same conclusions as in my provisional decision and for the same reasons. I've explained my reasons again below, with some further comment where I have deemed it appropriate to address responses to my provisional decision.

Prevention

I accept these were authorised transactions even though Mrs L was tricked. So, although Mrs L didn't intend the payments to ultimately go to scammers, Mrs L is presumed liable for the loss in the first instance. However, taking into account the law, regulatory rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider Nationwide should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks and other payment service providers are generally more familiar with than the average customers; and

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

Bearing this in mind, I need to decide whether Nationwide acted fairly and reasonably in its dealings with Mrs L when it processed the relevant payments.

The first three payments

I don't think I can fairly say Nationwide ought to have been obliged to have paused any of Mrs L's first three payments to the scam, pending enquiries, before following her instructions to send them. These were for relatively small amounts (£20.06, £501.50 and £501.50 respectively). I don't think they ought to have looked sufficiently unusual to Nationwide to warrant intervention.

I take on board Nationwide had already blocked a previous payment (prior to the £20.06 payment) Mrs L tried (but failed) to make as a result of the scam (which was a £1,000 debit card payment to Binance, from where Mrs L had intended to send it on to the scam investment platform). I understand the point has been made that Nationwide ought not only to have blocked this first attempted payment but also spoken to Mrs L in more depth about what she was doing, when it's possible all payments to the scam (including the first three payments) could have been prevented. However, Nationwide has explained this £1,000 payment was blocked specifically because it was going to Binance. I don't think I can fairly hold Nationwide at fault for not immediately following this up further with Mrs L when it had in fact already blocked the payment. This might, though, reasonably have given Nationwide reason to be more vigilant than normal with Mrs L's subsequent payment instructions. However, even taking this into account, I still don't think the first three payments ought reasonably to have looked suspicious enough to say Nationwide ought to have been obliged to have intervened before it executed Mrs L's instructions to send them.

The fourth payment

I've not seen anything to show the amount of this payment was anything other than unusual for Mrs L's account. Given the amount this instruction was for, and the fact that Nationwide had blocked that previous Binance transaction to safeguard Mrs L from potential fraud because of its general concerns, I think Nationwide reasonably ought to have paused this payment, pending enquiries with Mrs L, to check she wasn't at risk of financial harm, for example by continuing with her original plan of a crypto-related payment or payments (Nationwide was previously concerned about) through another method that might circumnavigate Nationwide's block.

Nationwide should have been alert to this possibility. By as early as January 2019 (so well before the relevant payments in this case), Nationwide ought reasonably to have known how scams like this work, including that customers often move money from one account in their name to another account in their name before moving it on again to the fraudsters. So even if Nationwide had seen the money was headed to Mrs L's own account (with Wise), I don't think this meant it didn't still have an obligation to intervene. In its response to my provisional decision Nationwide has referred to previous points it's already made and I already considered about this. But as I've said, this didn't mean Nationwide didn't have an obligation still to intervene.

I'm satisfied here, to meet its obligations to protect Mrs L from financial harm as a result of potential fraud, Nationwide ought to have paused this payment, pending enquiries with Mrs L, and to have called and spoken to Mrs L to check everything was in order before it allowed the payment through.

During the ensuing appropriate discussion I think Nationwide ought reasonably to have had with Mrs L before it allowed this payment through, I would reasonably expect Nationwide to have asked Mrs L who the payment was for, what the payment was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam.

I have no reason to believe Mrs L wouldn't have been open and upfront with Nationwide about what she was doing. In which case, I think Nationwide ought to have quickly learned the basic background to the payment instruction: that Mrs L's payment was to fund her own Wise account, from where she was planning to move it on ultimately to an investment platform recommended to her by someone on a well-known social media platform.

As we know, sadly Mrs L fell victim to a clone investment scam, whereby scammers held themselves out as a legitimate company. These can sometimes be difficult scams for banks and other payment service providers, through reasonable intervention, to protect their customers from. In this case, however, I think the context around how it was recommended to Mrs L ought to have been a big red flag to Nationwide.

Mrs L might very well have explained to Nationwide that she was aware the investment platform was registered with the FCA. But scams like this aren't new to Nationwide. And it reasonably ought to have known there would be a very clear way in which Mrs L could be safeguarded against the risk of falling victim to a clone investment scam – which would be for her to make touch with the company through its official contact details on the FCA register, to check she was indeed in touch with the real company, and not clone investment scammers. Bearing in mind how concerned I think Nationwide ought to have been about the context in which Mrs L had been recommended this 'investment' (which I have no reason to believe Mrs L wouldn't have disclosed to Nationwide upon appropriate questioning), of course also including the fact she had initially tried to pay them with cryptocurrency, I think this would have been an entirely proportionate recommendation from Nationwide, and that it really ought to have done this.

In this case, I'm persuaded this most likely would have made a difference. After all, it was when Mrs L contacted the real company on its correct details she was told they had no record of her and that it wasn't them who'd been in touch with her. And I think Mrs L most likely *would* have listened to and taken Nationwide's warnings seriously and consequently not have proceeded with the payment. I'm satisfied, therefore, that had Nationwide done what I think it reasonably ought to have done, Mrs L most likely wouldn't have made (and lost) this fourth payment of £5,015.

Payments five to 29

It follows that I also think Mrs L consequently wouldn't have made and lost these further payments.

Recovery

I've considered whether once Nationwide was notified of the scam by Mrs L it unreasonably hindered recovery of the funds. Given I think Nationwide ought to have prevented all the payments but one to three, I only need to consider this in regard to the first three payments. However, the scam payments were sent from Nationwide to a Wise account in Mrs L's

name, from where Mrs L then moved them onto the scammers. I don't think it's surprising Nationwide was unable to recover the funds in these circumstances. And I'm satisfied I can't say Nationwide unreasonably hindered recovery of the funds, nor therefore that it can be held responsible for Mrs L not being able to recover the payments after they'd been sent.

Putting things right

I've explained why I'm satisfied that had Nationwide done what it should have, the loss of payments four to 29, which total £131,120, would most likely have been prevented.

I've thought about whether Mrs L should bear some responsibility for this loss by way of contributory negligence (which might justify a reduction in compensation). In this case, I don't think it's unfair to say Mrs L wasn't as careful as she reasonably ought to have been. She's said she began to get cold feet. I've seen messages between Mrs L and the scammers, from which I'm satisfied Mrs L reasonably ought to have considered other measures rather than just continuing to pay the scammers more and more money. And I'm satisfied in the circumstances of this case it is fair and reasonable for Mrs L to share equal responsibility with Nationwide for the loss of payments four to 29.

So I think fair compensation would be for Nationwide to pay Mrs L £65,560 (which is 50% of the total of payments four to 29).

To compensate Mrs L for being deprived of this money since the date she lost it, Nationwide should also pay Mrs L interest on this amount calculated at 8% simple per year from the date she lost it to the date of settlement.

I've thought about what Mrs L has said in response to my provisional decision and I remain satisfied that the compensation I've set out is appropriate and fair.

I've considered Nationwide's points about Mrs L's payments going first to a Wise account in her name before only then being lost to the scammers, and its question of why Wise isn't sharing at least partial responsibility for the loss. And I note it's referred again to its submissions about this in its response to my provisional decision. However, whilst I note there were multiple parties involved here, I can only consider the only case open and before me here – which is this one against Nationwide (there is no case open here against Wise). I'm satisfied for the reasons I've explained above that Nationwide ought reasonably to have done more and that this caused Mrs L loss – and that in these circumstances the compensation I've recommended is appropriate. If Nationwide remains unhappy about this, it may wish to consider taking the matter up directly with Wise.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Nationwide Building Society to pay Mrs L:

- £65,560; plus
- interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement (if Nationwide deducts tax from this interest, it should provide Mrs L with the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 20 October 2023.

Neil Bridge

Ombudsman