

The complaint

Mrs T complains that Nationwide Building Society (“Nationwide”) refuses to refund her losses after she fell victim to a scam.

Mrs T has a representative helping her with the complaint.

What happened

Mrs T decided to invest in cryptocurrency after seeing a public personality recommend it. She did some research online looking for companies to invest with and selected a company (which I’ll call S). Mrs T submitted her details on S’s website and then someone from the company called her.

In mid-July 2022, Mrs T opened an account with S, as well as a cryptocurrency exchange (which I’ll call B) and also an account with another FCA regulated business which I’ll call W.

Mrs T made most of her payments from her Nationwide account into her account with W, then onto B. My understanding is that the money then went on from there to S to trade on her behalf.

Mrs T initially invested £250 (not paid from her Nationwide account), and once this showed a good return – the scammer persuaded Mrs T to invest another £1,000. On 16 September 2022, Mrs T made her first payment from her Nationwide account and transferred the £1,000 to W.

On 27 September 2022, Mrs T received credits into her account for two loans taken out in her name. She transferred two lots of £10,000 out of her account. On the same day she then attempted to transfer a further £9,950 out of her account.

Nationwide blocked the third transaction of £9,950– and called Mrs T to discuss why so much money was coming in and then leaving her account. Mrs T was dishonest during the call, telling the advisor that she was using the money for an extension. But Nationwide’s advisor said he wasn’t satisfied with her answers and refused to process the payment until she sent in evidence of the claims she’d made.

On 28 September 2022 – Nationwide’s advisor further questioned Mrs T and said he required the evidence requested on the earlier call. At this point Mrs T explained that she’d been told to lie by S, and that she was actually investing in cryptocurrency. Mrs T still believed it was a genuine investment and wanted to proceed with the transaction. However, the advisor informed Mrs T, a legitimate trading company would not tell her to lie to her bank and this was a common theme of this sort of scam. At this point Mrs T accepted she’d been the victim of the scam.

Nationwide reported the matter to W on the same day – and asked to be informed if any funds remained. Although, as the account with W was in Mrs T’s own name, she’d have access to this if any funds did remain. Nationwide also informed Mrs T that she could raise

complaints against her loan providers after she informed Nationwide that she didn't understand the loans would be in her name.

Mrs T subsequently raised a complaint with Nationwide explaining that she didn't understand why the first two transactions of £10,000 on 27 September 2022 didn't trigger an intervention. Mrs T felt that had Nationwide called her sooner, it would have discovered the scam before those payments left her account. She felt it had failed in its duty to protect her.

Nationwide explained that the transactions leaving Mrs T's account happened following large credits from a loan provider. This does happen when consumers take loans to fund different purposes such as extensions. So, it didn't feel the transactions were suspicious. But when a second loan came in, and a request was made for a third payment to leave the account, an intervention was triggered. Nationwide then discovered the scam and saved Mrs T from losing the final payment. Nationwide didn't feel it had made any errors so didn't uphold her complaint.

Unhappy with its response, she referred the matter to this service. One of our investigators looked into what happened and felt the first £10,000 was unusual spending for Mrs T based on her account conduct. They felt that Nationwide ought to have intervened in the first payment, and had it done so, it would have discovered the scam. Overall, they felt Nationwide should therefore refund the two £10,000 payments that left the account.

They did however also feel Mrs T should bear some responsibility for her loss as she appears to have done little research before sending significant sums to the scammers who she did not know beyond finding them online. There was also a warning on the Financial Conduct Authority's (FCA) website from August 2022, that the company Mrs T thought she was dealing with was no longer regulated. However, our investigator felt the payment of £10,000 was so unusual, that Nationwide should bear more responsibility. Overall, they felt a deduction of 40% should be made from the redress.

Mrs T accepted our investigators findings. But Nationwide did not agree. It asked for an Ombudsman to review the matter explaining that the loss did not occur from the Nationwide account, but from W which was another FCA regulated business. It felt W ought to bear some responsibility for the loss.

As the complaint couldn't be resolved, it was passed to me.

In my provisional decision of 27 July 2023, I set out why I was minded to partially uphold the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Nationwide initially commented that Mrs T should be liable for 50% of the loss which both I and Mrs T accepted. But Nationwide has again reiterated some of its earlier points which I will address below.

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 my provisional decision I explained the following:

Firstly, I think it may be helpful to set out that financial businesses (like banks and building societies) have an obligation to process the payments its customer authorises it to make both under the regulations applicable and the terms and conditions of accounts. However, businesses also have a duty to try to prevent their customers falling victim to a scam. Businesses need to strike a balance between intervening in payments to prevent scams or

financial harm, and the risk of unnecessarily inconveniencing or delaying legitimate transactions.

What this means is that Nationwide is generally expected to process any payments Mrs T authorises, but it also has to monitor transactions. If any transactions are flagged as suspicious, or sufficiently unusual – Nationwide should take measures to prevent its customers, such as Mrs T, falling victim to a scam.

It may also be helpful to explain, that Nationwide didn't scam Mrs T and was not the perpetrator of their losses. And, as explained above, businesses usually are under an obligation to process payments authorised by consumers. The starting point is that, if consumers authorised the payments, then they're responsible.

In order for me to uphold a complaint of this nature, and hold Nationwide liable for the losses instead of Mrs T, I'd need to be satisfied that Nationwide failed in its duty to protect Mrs T in some way, and that if it had instead done what it should have done, this either would have stopped the losses from occurring in the first place or helped to mitigate the losses once notified of the potential scam (by retrieving the money for example).

The first payment that left Mrs T's Nationwide account was relatively small and otherwise unremarkable. I appreciate this amount might be a lot of money for many consumers, but when compared to the thousands of transactions a business like Nationwide processes – it's not a significant figure that I would expect to trigger alarm bells.

However, having looked at the statements Nationwide submitted, the first payment of £10,000 sent on 27 September 2022 was significantly more than any other payments leaving Mrs T's account and was unusual. Given how unusual this was, like our investigator, I think it ought to have triggered an intervention. I accept that sometimes customers take loans for purposes such as car purchases or home extensions – which may explain why a large credit is made and then a large debit leaves the account following the credit. While this may be an indicator that lessens the risk, and a factor Nationwide may take into account, I don't think this is enough to absolve Nationwide of its duty to prevent loss altogether. I still think given the large sum leaving Mrs T's account, and that it was being forwarded to W (rather than a payment for a large purchase), and W being a relatively new payee, it ought to have triggered an intervention.

As Nationwide did discover the scam during the third payment, I have no reason to doubt that it would have discovered the scam on an earlier intervention. I would add that the intervention call that Nationwide carried out was exceptional and the advisor asked appropriately probing questions when being faced with quite determined but dishonest answers on the part of Mrs T.

I have also thought about Nationwide's concerns over the payments being sent on to W before being sent on to B and then the scammer. I have considered the argument that the loss didn't occur from the Nationwide account, and the complaint should instead be brought against W and that there has been a break in the chain of causation. However, I am not persuaded by that argument. Transferring money from one account to another before being moved on to the scammer, is a typical theme of this type of scam. And we would expect each FCA regulated business to take its duty to protect its customers seriously – whatever point in the payment journey they may be in. The money being sent to another FCA regulated business doesn't change that Nationwide was able to prevent the loss during the third payment, and therefore it could most likely have prevented it during the earlier payments.

Whilst I acknowledge there are number of parties involved here, (including the scammers ultimately responsible for the scam), I can only consider the case open before me here, which is the one against Nationwide. If Nationwide remains unhappy about this, it may wish to consider taking the matter up directly with W or any other parties that were involved. As explained, in this case, I'm upholding this complaint because I am satisfied that Nationwide should have intervened in the earlier payment and I'm confident, that had it done so, it would have discovered the scam and prevented the losses.

I would add that I understand Mrs T has alleged that the payments being made out of her account were actually made by the scammers having taken remote access of her devices. However, I can see the payments were made from the same IP address, and I'm also satisfied Mrs T knew about and authorised the payments to debit her account. During the intervention call, Mrs T was very determined to have the payment processed by Nationwide and it doesn't indicate she was overall unaware of what was happening on her account.

Finally, I've also thought about whether Mrs T should bear some loss in this case. I agree with our investigator, Mrs T agreed to send large sums of money to an unregulated business that she had no prior dealings with and appears to have done little to no research on them. She also gave remote access to her devices and access to her accounts to people she did not know. I don't think she's taken the steps we would expect a reasonable consumer to take to safeguard her account and money – so I think she should bear some responsibility for contributory negligence. I do accept that Mrs T was clearly taken in by the scammers and trusted them – and she's been a genuine victim of a scam. And Nationwide being the experts here, ought to have intervened sooner and I'm persuaded that it could have prevented the loss. So, I think they should bear more responsibility. Overall, I'm inclined to agree with our investigator that a deduction of 40% from the redress appears fair and reasonable in this case.

As the money I'm asking Nationwide to refund came from loans, I don't think any interest needs to be awarded for loss of use.

I have thought about compensation for the distress that Mrs T has suffered. I understand the experience has caused Mrs T significant distress and inconvenience. While I am very sorry for the difficulties she has experienced, ultimately it was the scammer who was responsible for her suffering. And whilst I have concluded Nationwide most likely could have prevented the payments, I've also explained why I think a 40% reduction to the compensation due to contributory negligence is appropriate. Bearing all of this in mind, overall, I'm satisfied the award I have set out here represents a fair outcome to this case, so I don't intend to make an additional award for distress and inconvenience.

Putting things right

Nationwide should refund to Mrs T, 60% of the two £10,000 payments that debited her account on 27 September 2022.

Nationwide responded to my provisional decision making the following points.

- *Nationwide felt Mrs T had been negligent and should bear 50% liability for the loss which is more in line with how this service usually considers these types of complaints. It set out a number of reasons why the reduction should be 50% (which I set out below).*
- *Nationwide also queried whether Mrs T was actually repaying the loan to one provider – because if she hadn't, then this isn't a loss that she should be reimbursed for.*

I agreed that Mrs T had been negligent for the reasons Nationwide set out as well as those highlighted by Nationwide. We explained that:

- *Mrs T didn't carry out any checks for scam warnings.*
- *Mrs T doesn't appear to have done any research relying solely on what she was being told by the scammers.*
- *She confirmed to Nationwide she never checked the scammers platform herself despite having access to it. She took everything she was told at face value.*
- *She repeatedly tried to mislead Nationwide during its intervention calls.*
- *She gave the scammers remote access to her devices.*
- *The investment growth Mrs T was told about was too good to be true and this ought to have raised at least some questions on the part of Mrs T.*
- *We also reiterated that Mrs T sent large sums of money to an unregulated business that she had no prior dealings with.*

So overall, I don't think she's taken the steps we would expect a reasonable consumer to take to safeguard her account and money. So, I agreed that the redress could be reduced by 50%.

We also explained to Nationwide that the loans remained payable, and Mrs T wasn't, at this stage, pursuing any complaints against the loan providers.

At this stage both Nationwide and Mrs T replied accepting my view regarding the redress being reduced by 50% for contributory negligence.

Following this, Nationwide replied that it still did not agree with my provisional decision. Nationwide reiterated its earlier points that it felt, Mrs T transferring the money to another UK regulated bank "W" before sending the funds on to the scammer, broke the chain of causation. Nationwide felt the losses occurred from the account with W, rather than from Mrs T's Nationwide account. It also felt I should assess the actions taken by W to form a complete and informed view of the case, even if I wasn't able to order any redress against W. It felt, as the money was sent to the scammer from W, W should be held liable for the losses for not intervening and preventing the loss rather than Nationwide.

As I've said before, I realise there were multiple parties involved here, and I'm fully aware of the facts relevant to this case. I've considered carefully, the information available to me. But I'd like to re-iterate that Mrs T isn't currently pursuing a complaint against W – and she's aware she is able to. I cannot assess what W did when no complaint has been brought against it, and W has not submitted any information it holds regarding this case. As I've explained, Mrs T has chosen to raise a complaint against her main bank, who she had a long-standing relationship with, and I can only assess the complaint that's brought before me. I reiterate that if Nationwide remains unhappy about this, it may wish to consider taking the matter up directly with W or any other parties that were involved.

For the reasons I've already explained, I feel Nationwide ought to have intervened when Mrs T sent her first payment of £10,000. And as it was able to prevent the loss when it did intervene, I've got no reason to doubt that it would have prevented the loss earlier, when it ought to have intervened.

It has to be borne in mind, that it's a known theme of this type of scam, that multiple parties are often involved before the money is eventually sent to a scammer - whether it be another bank, or an account held in the consumers own name with a cryptocurrency exchange. The loss that consumers suffer, has not been impacted in any way because the money may have

gone through one or sometimes several other businesses. In this case, Nationwide's advisor carrying out the intervention call, recognised there was a significant likelihood that Mrs T was at risk of being scammed despite Mrs T trying to mislead it. And Mrs T fell victim to the exact scam that the UK regulator has warned about. Some of the most well-known and common characteristics of the scam are present here.

So, for the reasons I've already explained, I feel Nationwide failed in its duty of care towards Mrs T. I'm satisfied this failing was an effective cause of the losses as Nationwide could have (and did eventually) prevent the loss. And the loss was a reasonably foreseeable loss that changed in no way due to the money going to W before being sent on to the scammer. So, I'm not satisfied that there has been a break in the chain of causation, and I therefore think it's fair Nationwide should be held liable for the losses Mrs T suffered.

So, for the reasons I have already explained, I uphold this complaint. Nationwide should be held liable for the losses Mrs T suffered from the first £10,000 payment sent on 27 September 2022. But for the reasons I have already explained, the redress can be reduced by 50% for contributory negligence.

Putting things right

Nationwide should refund 50% of the two £10,000 payments that debited Mrs T's account on 27 September 2022.

My final decision

For the reasons explained, I uphold this complaint. Nationwide Building Society should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 31 October 2023.

Asma Begum
Ombudsman