

The complaint

Mr B complains about Nationwide Building Society.

He says that Nationwide didn't do enough to protect him when he became the victim of a scam and would like it to refund him the money he has lost.

What happened

The details of what happened are well known to both parties, so I won't repeat them here.

In summary, Mr B came across an advert on Facebook for investing in cryptocurrency. Mr B followed a link on the advert and was impressed by the website it took him to. Mr B says that he looked up reviews of the website, which were positive, and completed an enquiry form.

Mr B was then contacted by a representative, and discussed the process involved. He was persuaded to make an initial investment, which appeared successful on the portal he had been given access to.

As he was happy with his supposed increased profits, Mr B was further persuaded to 'upgrade' his account and make further payments. However, after making these payments, Mr B began to be harassed for more money. He discussed what was going on with his son who raised concerns – and on looking at online reviews again found they were now flooded with complaints, and he realised he had been scammed.

Mr B made the following payments using his Nationwide credit card.

Date	Payee	Payment type	Amount
18/09/2020	Cryptonet	Credit card	£1,500 (plus £37.50 transaction fee)
18/09/2020	Cryptonet	Credit card	£2,000 (plus £50 transaction fee)
15/10/2020	Cryptonet	Credit card	£600 (plus £15 transaction fee)
23/10/2020	Cryptonet	Credit card	£1,400 (plus £35 transaction fee)
		Total loss	£5,637.50

Upon discovering the scam, Mr B complained to Nationwide. It didn't uphold his complaint, so he came to this Service.

Our Investigator looked into things but didn't think Nationwide had done anything wrong.

Mr B asked for a final decision, so the complaint has been passed to me.

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 decided not to uphold Mr B's complaint for broadly the same reasons as our Investigator. I know this will be disappointing for Mr B, so I'll explain why.

It isn't in dispute here that Mr B has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In broad terms, the starting position at law is that banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mr B authorised the payments in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Nationwide should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having 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 that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

In this case, I need to decide whether Nationwide acted fairly and reasonably in its dealings with Mr B when he authorised payments from his account or whether it could and should have done more before processing the payments.

Having considered the payments Mr B has made, I'm afraid I don't think that any of them were significantly unusual or uncharacteristic enough for Nationwide to have first got in touch with him before processing the payments on his request.

I know that Mr B and his representatives consider that the payments are unusual considering his usual spending pattern – and that Nationwide should have had concerns about what was happening, especially as Mr B spent just over £3,500 to a crypto exchange in one day – which would have been suspicious.

But as I've explained above, there is a balance to be struck – and it is not reasonable for Nationwide to be involved in every transaction a customer makes, and I don't consider the amount of these payments to be high enough for Nationwide to have concerns that Mr B was

at risk of financial harm. And while I understand the payments were being made to a crypto exchange, not every payment made to crypto is as a result of a scam.

I am very sorry for the situation Mr B now finds himself in – I know he has lost a lot of money as a result of a cruel scam which has left him feeling extremely anxious and embarrassed by what has happened.

But the loss is the fault of the scammer themselves, and I can't ask Nationwide to refund Mr B when I don't think that it has done anything wrong.

My final decision

I don't uphold this complaint,

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

Claire Pugh
Ombudsman