

The complaint

Mrs R is unhappy that Nationwide Building Society will not refund the money she lost as the result of an authorised push payment (APP) scam.

Mrs R brought her complaint through a representative, for ease I will refer solely to Mrs R in this decision.

What happened

Mrs R responded to an advert she found online to invest in cryptocurrency. Both parties are familiar with the details of the scam so I will not repeat them here in full. Mrs R made five faster payments to an account the scammer had instructed her to set up at an e-money institution as set out below.

payment	date	value, £
1	14/07/2022	25
2	26/07/2022	1,000
3	28/07/2022	3,200
4	06/09/2022	2,500
5	06/09/2022	1,200

The first two payments were credited back to Mrs R's Nationwide account (minus £1.24). When Mrs R later tried to access the gains from her investment and was told she would need to first deposit more funds, she realised she had been scammed and contacted Nationwide.

Nationwide rejected Mrs R's refund claim saying it had processed the payments to an account in her own name so she should raise her claim with the other provider.

Our investigator upheld Mrs R's complaint. He said payment 3 was out of character for Mrs R's account and Nationwide ought to have intervened then. Had it done so it would have most likely broken the spell of the scam and so it should refund payments 3 to 5. However, he felt Mrs R should bear some responsibility and so this refund should be reduced by 50%.

Mrs R accepted this assessment but Nationwide disagreed. In summary, it said it was the e-money institution's failure to intervene that caused the loss, so it did not accept Nationwide could be held liable, though it did agree with the assessment on the contributory negligence. It went on to set out the many issues that it believes focusing solely on Nationwide's actions creates, and commented on the problems it sees in the approach it perceives we have taken.

I issued a provisional decision as my findings were not the same as the investigator's.

Extract from my provisional decision dated 5 December 2023

I note Nationwide feels strongly that it was not the point of loss and that the e-money institution ought to be held liable. But I am satisfied based on the available evidence that Nationwide has a case to answer here, and it is with Nationwide that Mrs R's dissatisfaction lies as she believes it ought to have protected her in the first instance.

There's no dispute that Mrs R made and authorised the payments. Mrs R knew why she was making the payments. At the stage she was making these payments, she believed she was moving money to allow her to start investing in cryptocurrency. I don't dispute Mrs R was scammed and she wasn't making the payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Nationwide has an obligation to follow Mrs R's instructions. So in the first instance Mrs R is presumed liable for her loss. But there are other factors that must be taken into account. To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payments were not made to an account held by another person the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case. This means I think that Nationwide should have:

- *been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- *had systems in place to look out for unusual transactions or other signs that might indicate that 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 financial institutions are generally more familiar with than the average customer.*
- *in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.*

In this case I think Nationwide ought to be held liable for the transactions. I'll explain why. I agree with the investigator that Nationwide ought to have intervened at the time it received the instruction to make payment 3. It was significantly out of character for Mrs R's account based on the previous 12 months' transactions. Her account usage typically had a stable pattern with the majority of transactions being under £100, except for payments to her credit card provider.

So what I need to decide, based on the available evidence, is what would most likely have happened, had Nationwide intervened effectively.

I would expect Nationwide to have asked Mrs R who the payment was for, what it was for, and for the basic surrounding context of the payment - it could, for example have, asked how she had found the investment opportunity, whether she'd parted with personal details in order to open a trading account, whether she was being helped by any third parties and had they used remote access software, whether the investment opportunity was linked to a prominent individual, advertised on social media etc. These are typical features of cryptocurrency scams.

I have no reason to believe Mrs R wouldn't have been open with Nationwide, and I think she would have taken its intervention seriously. So I think Nationwide would have quickly learned from its conversation with Mrs R the basic background to the payment instruction – that she was moving money to then invest in what she thought was a cryptocurrency trading opportunity which she'd decided to pursue after learning about it online, and it was figure-

headed by a leading money saving expert. And that she had been guided by a third party using AnyDesk.

Even though the conversation would have identified the payment was going to Mrs R's own account (before being sent onto the scammers), the conversation shouldn't have stopped there on the basis that the money appeared to be going to somewhere safe and within Mrs R's control. This is because by 2022 Nationwide was well aware – or ought to have been well aware – of how scams like this work – including that the customer often moves money onto an account in their own name before moving it on again to scammers.

So, in the round, I think Nationwide would have been concerned by what the conversation would most likely have revealed and so warned Mrs R, explaining the typical characteristics of scams like this. Had it done so I think Mrs R would have listened and recognised she was at risk.

It follows I think Mrs R would not have gone ahead with payment 3, nor any subsequent payments.

I have then looked at whether Nationwide did what we would expect in a scam case to try to recover the funds. However, in the circumstances of this case I am satisfied there was no reasonable opportunity for it to recover any of the funds.

In conclusion, for the reasons set out above I currently think Nationwide must refund payments 3 to 5 to Mrs R.

I've considered carefully whether Mrs R should hold some responsibility for her loss by way of contributory negligence. I think a reasonable person, having spoken to who she thought was an experienced cryptocurrency investor, might be persuaded that the investment was legitimate. Particularly bearing in mind the social engineering and persuasion tactics used by the scammer (supporting her through the process, showing her the tracking tools for her investment, having bi-weekly update calls). All of which would make it hard for Mrs R to identify and reflect on any warning signs or carry out more checks before deciding to invest. She had after all checked online reviews at the start of the process.

I don't think Mrs R, as an inexperienced investor, acted unreasonably here. Mrs R continued to make payments over a period of time – but she was unaware her money was at risk. She was in constant contact with the scammer, who messaged her regularly about her investment, advising her on what to do and reassuring her of the gains she could make. And the scammer used a particular type of software that allowed Mrs R to physically see her investment and the gains she was making. She was completely caught up in the scam, and I don't think she ought to have reasonably known she was being scammed or alerted to anything that would have prompted her to carry out further due diligence checks whilst the payments were being made. It was only at the point she wanted access to her gains, and was asked for more money to facilitate this, that she became suspicious.

So in all the circumstances, I don't think there was contributory negligence here. Mrs R was sadly the victim of a sophisticated cryptocurrency investment scam and wasn't partly to blame for what happened.

I then set out what Nationwide would need to do to put things right.

Both parties responded to my provisional decision, Mrs R accepted it.

Nationwide did in part but disagreed with my finding that there was no contributory negligence. It sent in examples, which have been sent to Mrs R's representative, of the

negative reviews Mrs R would have seen had seen when completing the online research she said she did. It argued that if Mrs R saw positive reviews as she said, she must also have seen the negative reviews, yet she proceeded anyway and so must share the liability.

I then issued a second provisional decision in response to Nationwide's comments.

Extract from my provisional decision dated 21 December 2023

In terms of new information to consider, Nationwide submitted a number of reviews that were available online prior to Mrs R investing. They were negative and cast doubt on the legitimacy of the investment firm Mrs R had selected.

Mrs R said as part of her testimony when she brought her complaint to this service that 'I did my own due diligence by researching the company online and looking at the Trust Pilot reviews, which seemed positive and therefore I did not have any reasonable basis to believe the company was a scam'.

But I think had she completed a reasonable level of online due diligence, as she described, she would not have been comfortable to proceed as she did. It seems she was happy to make her investment decision with either only scant or incomplete research - or research with mixed results - and in doing so missed an opportunity to prevent her losses. In saying that, my finding does not change that as the expert in fraud prevention Nationwide also missed opportunities to do the same.

Overall, this means I find Nationwide's request that Mrs R should share some of the responsibility for her losses to be fair. And I am aware Mrs R had previously accepted this finding as it formed part of the investigator's assessment.

It follows I am changing what Nationwide should do to put things right.

Both parties responded to my second provisional decision. Mrs R accepted the outcome and Nationwide said it had nothing further to add.

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.

As neither party submitted any new information or comments for my consideration in response to the second provisional decision, I have no reason to change the findings or outcome presented in it.

It follows, for the reasons set out above, that I find Nationwide to be partially liable for Mrs R's losses, but that Mrs R must also take some responsibility for her losses by way of contributory negligence.

Putting things right

Nationwide must:

- refund 50% of Mrs R's third, fourth and fifth payments, so £3,450
- as Mrs R used an overdraft for a short time to pay the scammer, 50% of any fees, charges or interest should be refunded to her as well.
- add interest at the rate of 8% from the date of the payments to the date of settlement*

*If Nationwide deducts tax from the interest element of this award, it should provide Mrs R with the appropriate tax certificate so she can submit a claim to HMRC if applicable.

My final decision

I am upholding Mrs R's complaint in part. Nationwide Building Society must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 1 February 2024.

Rebecca Connelley
Ombudsman