

The complaint

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

What happened

Ms H saw an advert for an investment opportunity in a national newspaper. She was then contacted by the scammer about this. Over time she was persuaded to invest believing it was a legitimate way to make money. The scammer used remote access software to help Ms H set up a new account in her name at an e-money institution (EMI). She made the following transfers to that account from her Nationwide current account, and from there her money was moved onwards to cryptocurrency exchanges.

Date	credits to Nationwide current account	debits to new EMI account
13/05/2022	£500	£500
16/05/2022	£500	£500
20/05/2022	£1,100	£1,000
23/05/2022	£100	£500
31/05/2022	£500	£500
23/06/2022	£500	£500
30/06/2022	£500	£500
13/07/2022	£500	£500
27/07/2022	£400	£200
27/07/2022	£800	£500

In September 2022 Ms H asked to withdraw the gains her investment had made, and that she had seen on the website the scammer directed her to. When the scammer did not respond she realised she had been scammed and reported this.

Ms H says Nationwide did nothing to protect her and must refund her losses. Nationwide says the money was going to an account in Ms H's name so it had no concerns.

Our investigator upheld Ms H's complaint in part. She said Nationwide ought to have intervened on 20 May 2022 and had it done so the scam would most likely have been stopped at that point. However, she felt Ms H should share liability for her losses from this point as she also did not take adequate steps to protect her money.

Ms H accepted this assessment but Nationwide disagreed. It said the activity was not out of character for Ms H's account, or unusual. It argued that it was the EMI's failure to intervene that caused the loss, so it did not accept Nationwide could be held liable. It pointed out that the transfers to the crypto-exchange were made by the EMI so it had knowledge of the

associated risk – it did not. 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.

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.

I note Nationwide feels strongly that it was not the point of loss and that the EMI 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 Ms H's dissatisfaction lies as she believes it ought to have protected her in the first instance.

There's no dispute that Ms H made and authorised the payments. Ms H 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 Ms H 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 Ms H's instructions. So in the first instance Ms H is presumed liable for her loss. But there are other factors that must be considered. 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 in part for some of 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 the third payment. I say this as I find there was a pattern emerging that was out of character for Ms H's account. Ms H did make payments into her account, usually in the low hundreds, but there were not normally followed by corresponding debits. And by 20 May 2022 Ms H had made three payment instructions straight after the receipt of funds sending £2,000 in total to a new payee that she had only set up the week before. I find this merited investigation by Nationwide.

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 Ms H 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, what returns was she expecting, whether and how she was being helped by any third parties and if they had used remote access software etc.

I have no reason to believe Ms H 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 Ms H the basic background to the third 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 seeing an advert in a newspaper. And that she had been guided by a third party using AnyDesk. And told she would double her money and get rich quickly. Nationwide would also have learnt that Ms H had done limited due diligence.

Even though the conversation would have identified the payment was going to Ms H'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 Ms H'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 Ms H, explaining the typical characteristics of scams like this. Had it done so I think Ms H would have listened and recognised she was at risk. She was not an experienced investor and the scammer had not provided her with a cover story.

It follows I think Nationwide would have broken the spell of the scam and Ms H would not have gone ahead with payment 3, nor any subsequent payments.

I have looked at whether Nationwide did what we would expect in a scam case to try to recover the funds. It contacted the recipient firm but no funds remained. However, irrespective of the action it took, in the circumstances of this case - as the funds had been moved onwards and Ms H knew this, I am satisfied there was no reasonable opportunity for it to recover any of the funds.

I've then considered carefully whether Ms H should hold some responsibility for her loss by way of contributory negligence. I think she should, as from the evidence I have seen it seems Ms H carried out minimal checks on the investment opportunity – she appears to have looked only at the website the scammers pointed her to, rather than doing any independent research and checks. The scammer promised she would double her money which ought to have been a 'too good to be true' red flag. I find she was willing to invest repeated sums without an appropriate level of due diligence.

I am therefore instructing Nationwide to refund 50% of Ms H's losses as listed between 20 May 2022 and 27 July 2022.

Putting things right

Ms H's losses between 20 May 2022 and 27 July 2022 were £4,200 so Nationwide must refund 50% of this to her (£2,100) and add 8% simple interest* from the date of each payment until the date of settlement.

*If Nationwide deducts tax from the interest element of this award, it should provide Ms H with the

appropriate tax certificate so she can submit a claim to HMRC if applicable.

My final decision

I am upholding Ms H'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 Ms H to accept or reject my decision before 4 March 2024.

Rebecca Connelley
Ombudsman