

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 here are well known to all parties – so I won't repeat them here.

In summary, Mr B received an invitation to a WhatsApp group claiming to be Binance (a legitimate cryptocurrency exchange). He looked up reviews online and googled crypto mining. After speaking with some other investors in the group, he decided to invest.

Mr B made the following payments from his Nationwide accounts to his own account with Payward, before then moving the payments on.

Date	Payee	Payment type	Amount
24 May 2023	Payward Ltd	Transfer	£5
24 May 2023	Payward Ltd	Transfer	£4,995
24 May 2023	Payward Ltd	Transfer	£5,000
24 May 2023	Payward Ltd	Transfer	£5,000
25 May 2023	Payward Ltd	Transfer	£4,999.99
13 June 2023	Payward Ltd	Transfer	£5,000
13 June 2023	Payward Ltd	Transfer	£5,000
13 June 2023	Payward Ltd	Transfer	£5,000
16 June 2023	Payward Ltd	Transfer	£4,300
		Total	£39,299.99

Unfortunately, Mr B had fallen victim to a scam, which he realised when he asked to make a withdrawal and was told he needed to pay taxes to do so.

Mr B complained to Nationwide, but it didn't uphold his complaint. Unhappy, he brought his complaint to this Service. Our Investigator looked into things but didn't think that the complaint should be upheld.

Mr B and his representatives asked for an Ombudsman to make 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, so I'll explain why.

It isn't in dispute here that Mr B has fallen victim to a scam and 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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

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 – so even though he was tricked into doing so and didn't intend for the 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 above, 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 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.

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

Having considered the payments Mr B made as part of the scam, I am not persuaded that Nationwide needed to get in touch with him when he made the first payment – however unlike our Investigator I do think that it should have contacted him when he made the second payment as part of the scam. The intention being to check that all was well and protect Mr B from financial harm.

But in order for me to uphold his complaint, I would have to think that such an intervention would have prevented what happened, and stopped the scam payment from being made, and I'm afraid that I don't think that it would. I'll explain why.

Nationwide stopped the third payment that Mr B made and spoke with him at length about what he was doing and why – but although Mr B says he wasn't told to lie to the bank, he chose to withhold crucial information from Nationwide when it questioned him at this time.

Nationwide has provided a copy of this call, along with several others that took place during the time the scam took place. During this and subsequent calls, Nationwide;

- Provided specific education about Crypto scams
- Reminded him about being truthful with Nationwide, and that the purpose of the questioning was to provide him with protection from financial harm
- Asked Mr B if he was taking advice about what to do, or buy, from any third party
- Asked Mr B if he had any intention of moving the payments onwards from his own crypto account
- Provided education about scammers using genuine crypto exchanges to defraud customers
- Reminded Mr B that if the payment turned out to be part of a scam, it would be unlikely he could retrieve his money
- Asked Mr B if there was any reason why he was splitting his payments rather than making a one-off payment
- Had anyone contacted him by social media or otherwise to introduce him to the investment
- If the investment involved 'Binance'

Nationwide has also said that when Mr B set up Payward as a new payee, he was directed to its 'scam-checker' service – but Mr B didn't follow this advice.

Mr B denied that any third party was involved – and said that he had been investing in crypto for a year – and that he works in software and is aware of cybersecurity. He also said that he had no intention of moving the funds onward from his own wallet – and that the investment didn't involve Binance.

I don't know why Mr B wasn't open with Nationwide about what had really happened, but because he didn't answer its questions truthfully, it wasn't able to uncover the scam. I also think that it's line of questioning should have prompted Mr B to take a close look at what he was doing, as most of the things it was asking him were applicable to his circumstances but he chose to ignore this.

Mr B's representative says that if Nationwide had asked Mr B how he was being communicated with, he would have told them it was by WhatsApp – which would have been a clear indicator Mr B was being scammed. But Mr B told it that he wasn't in touch with anyone else about the investment, so I don't think this would have been uncovered.

I've also taken into account what Mr B has said about his health issues which he says can affect his memory – and that after having a seizure he cannot talk properly and stammers and takes a long time to recover. He says that Nationwide did not ask him about his general state of health, and that as he had a seizure on the day of the first blocked payment, he could not answer its questions accurately. He says that he wishes it had blocked every payment and questioned him in depth, and that he would have been in a better state to answer them.

I have thought about what Mr B has told us above, and while I am sorry to hear he has been unwell, I am not persuaded Mr B's health condition made him more vulnerable to the scam or prevented him from understanding what Nationwide was asking him. Mr B didn't seem to have any issues answering the questions put to him – and he didn't pause or stammer when trying to recall information or provide answers. I also consider that Nationwide did question him in depth – and while it didn't block every payment, it did block several, and spoke with him on each occasion.

I am very sorry for the situation Mr B now finds himself in – I know that he has lost a large sum of money. But the fault lies with the scammers themselves – not Nationwide. And I can't ask Nationwide to refund him when I don't think 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 20 June 2024.

Claire Pugh
Ombudsman