

The complaint

Mr C complains that Nationwide Building Society (NWide) won't refund any money he lost in an investment recovery scam.

What happened

What Mr C says:

Mr C invested approximately £1,000 in bitcoin in a bank in 2020. The bank went out of business and he assumed he'd lost the money. Much later, he was contacted by a firm which claimed to be a recovery business – and they said they could work to get Mr C's money back. The investment was said to be worth over £280,000. Mr C was sent what seemed to be genuine papers and documentation– one of the recovery managers was said to be FCA authorised, and he was shown his regulatory credentials.

To get the money refunded, Mr C agreed to pay fees to the 'recovery agents' as shown. The payments were sent to Mr C's account with another bank (which I call 'bank A'), and from there to the 'recovery agents' – in crypto currency.

Date	Payment	Amount
16 January 2023	Faster payment to Mr C's account at bank A	£5,000
23 January 2023	Faster payment to Mr C's account at bank A	£10,000
23 January 2023	Faster payment to Mr C's account at bank A	£5,000
24 January 2023	Faster payment to Mr C's account at bank A	£10,000
24 January 2023	Faster payment to Mr C's account at bank A	£10,000
30 January 2023	Faster payment to Mr C's account at bank A	£10,000
30 January 2023	Faster payment to Mr C's account at bank A	£5,000
30 January 2023	Faster payment to Mr C's account at bank A	£10,000
30 January 2023	Faster payment to Mr C's account at bank A	£5,000
7 February 2023	Faster payment to Mr C's account at bank A	£10,000
7 February 2023	Faster payment to Mr C's account at bank A	£4,000
8 February 2023	Faster payment to Mr C's account at bank A	£10,000
8 February 2023	Faster payment to Mr C's account at bank A	£10,000

8 February 2023	Faster payment to Mr C's account at bank A	£10,000
8 February 2023	Faster payment to Mr C's account at bank A	£10,000
8 February 2023	Faster payment to Mr C's account at bank A	£10,000
8 February 2023	Faster payment to Mr C's account at bank A	£5,000
9 February 2023	Faster payment to Mr C's account at bank A	£5,000
13 February 2023	Faster payment to Mr C's account at bank A	£10,000
13 February 2023	Faster payment to Mr C's account at bank A	£10,000
13 February 2023	Faster payment to Mr C's account at bank A	£5,000
16 February 2023	Faster payment to Mr C's account at bank A	£9,000
18 February 2023	Faster payment to Mr C's account at bank A	£7,000
19 February 2023	Faster payment to Mr C's account at bank A	£3,000
Total		£188,000

Contact with the agents were via WhatsApp. The recovery agents then said they'd located the funds - but said he needed to pay tax/liquidation fees of over £30,000 to have them returned. He then realised he had been scammed. No money was recovered and it transpired that the real FCA registered person had had his identity cloned.

Mr C said NWide should've done more to protect him. He says the payments were unusual in nature and NWide should intervened. If the bank had done so, he would not have lost the money. He says NWide should refund the money he has lost.

What NWide said:

NWide didn't refund any money. The firm said (in November 2023) that they'd not carried out a review as they'd asked Mr C (through his representatives) a number of questions but without response. NWide gave Mr C referral rights to our service.

Our investigation so far:

In his second view (having received evidence from NWide), our investigator didn't uphold the complaint. He said the payments weren't out of character and therefore, NWide could not have been expected to intervene.

Mr C (via his advisors) didn't agree and asked that an ombudsman look at his complaint.

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'm sorry to hear that Mr C has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr C didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider NWide 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.

I need to decide whether NWide acted fairly and reasonably in its dealings with Mr C when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary– and in this case, the payments were made to Mr C's own account with bank A.

The important matter here is whether this were payments that NWide might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Mr C.

I looked at Mr C's account history with NWide. And I don't think the payments were unusual for him. For example, I can see the following large payments from his account in the 12-month period leading up to the scam:

January 2022: Six payments of £10,000; and one for £5,000.

February 2022: £369,733.

March 2022: £6,468.

August 2022: £10,000.

January 2023: Three payments of £10,000; £5,000; £5,375.

February 2023: £204,900.

There were also frequent payments of between £2,000 and £5,000 during the same period –

which I haven't listed here.

Given this, I don't consider that the payments to Mr C's account at bank A could be considered unusual; and therefore it isn't reasonable to say that NWide should have intervened and contacted him.

And therefore, I don't consider that NWide are liable to refund any of the money to Mr C.

Recovery: We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether NWide took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money.

And here, the funds went from the account at bank A to a crypto currency merchant and the loss occurred when crypto was then forwarded to the scammers. In this case, as the funds had already been forwarded on in the form of cryptocurrency there wasn't likely to be anything to recover. And certainly that would've been the case by the time Mr C contacted NWide in November 2023.

I'm sorry Mr C has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold NWide responsible for his loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 February 2025.

Martin Lord
Ombudsman