

The complaint

Mr A complains that Nationwide Building Society (“Nationwide”) won’t refund the money he lost as part of a scam.

What happened

In early 2023, a friend of Mr A’s told him about an investment scheme they were involved in. This friend showed Mr A the investment platform they were using and Mr A says he could see they were making profits, so he decided to invest too. Mr A visited the investment platform’s website and felt it was professional, he says he also did not see any negative information online about this investment opportunity. Mr A made contact with an individual from the investment firm and was encouraged by what he considered to be their professional manner. Mr A made an initial investment, and could see that he was receiving some returns, he was able to withdraw some of his profit - £1,000 – from the investment platform back into a cryptocurrency account he held, Mr A then reinvested this amount.

Reassured by what he was seeing, Mr A made a large payment to the investment scheme from his Nationwide account, this payment was for £4,119.60 and was to a cryptocurrency account in Mr A’s name, the funds were then moved on to the investment platform from there. Unfortunately, and unknown to him at the time, Mr A was dealing with a scammer.

Mr A asked to withdraw his profits, but when he was unable to do this, and was then unable to access the investment platform, he realised he had been scammed.

Mr A reported the scam to Nationwide and it looked into what had happened, but did not agree it had any liability for his loss.

One of our Investigators looked into the complaint and they felt that Nationwide should have taken steps to provide Mr A with a relevant warning about the payment he made to the scam and, had it done so, they considered it likely Mr A would not have gone ahead with the payment. So, they felt Nationwide should refund the payment Mr A made, plus interest.

Mr A accepted the investigator’s findings, Nationwide did not. It says the payment was not unusual enough to have triggered any intervention, and in any case that its process does not include the provision of such a warning for a card payment like the one Mr A made.

As no agreement could be reached this complaint has now been passed to me for a decision.

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.

It’s not disputed that Mr A authorised the payment that is the subject of this complaint. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here)

that means Mr A is responsible for that payment. That remains the case even though Mr A was the unfortunate victim of a scam.

Because of this, Mr A is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victim to scams.

Taking the above into consideration, I need to decide whether Nationwide acted fairly and reasonably in its dealings with Mr A, or whether it should have done more than it did.

Mr A's account was well established, he'd been using it for some time, and so Nationwide did have a general picture of the kind of spending Mr A did. In general, Mr A used his account for day-to-day spending with occasional larger payments. In the context of his account the payment to the scam, at over £4,000, was somewhat out of character, but not so high that I think it should have been flagged on value alone. However, when coupled with the fact that the payment was identifiably to cryptocurrency, I think it should have flagged as potentially concerning to Nationwide. I acknowledge that Mr A had previously made other payments to the same cryptocurrency account, but those other payments were generally for significantly smaller amounts – rarely more than £300 – and he'd not made a large payment to that account for quite some time.

And by February 2023, firms like Nationwide had been aware of the risk of multistage scams involving cryptocurrency (that is scams involving funds passing through more than one account controlled by the customer before being passed to a fraudster) for some time.

Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency have continued to increase since. They reached record levels in 2022. During that time, cryptocurrency was typically allowed to be purchased through many high street banks with few restrictions.

By the end of 2022, however, many of the high street banks had taken steps to either limit their customer's ability to purchase cryptocurrency using their bank accounts or increase friction in relation to cryptocurrency related payments, owing to the elevated risk associated with such transactions.

So, taking into account all of the above, I am satisfied that, by the end of 2022, prior to the payment Mr A made in February 2023, Nationwide ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name. In those circumstances, as a matter of what I consider to have been good practice, Nationwide should have had appropriate systems for making checks and delivering warnings before it processed such payments.

Taking all of the above into account, and in light of the increase in multi-stage fraud, particularly involving cryptocurrency, I don't think that the fact the payment in this case was going to an account held in Mr A's own name, or that it was to an account he'd previously made other payments to, should have led Nationwide to believe there wasn't a risk of fraud, particularly given that this was the highest payment Mr A had made to that account.

In my mind, that ought to have given Nationwide sufficient cause for concern that Mr A could be at risk of suffering financial harm from fraud when making this payment, And in those

circumstances, it should fairly and reasonably have taken additional, proportionate, steps before completing the payment.

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Nationwide's duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

Taking that into account, I think Nationwide ought to have provided a warning (whether automated or in some other form) that was specifically about the risk of cryptocurrency scams, given how prevalent they had become by the end of 2022. In doing so, I recognise that it would be difficult for such a warning to cover off every permutation and variation of cryptocurrency scam, without significantly losing impact.

So, at this point in time, I think that such a warning should have addressed the key risks and features of the most common cryptocurrency scams – investment scams. Including highlighting in clear and understandable terms, the key features of common cryptocurrency investment scams, for example referring to: an 'account manager', 'broker' or 'trader' acting on their behalf; correspondence on mobile messaging services; or a small initial deposit which quickly increases in value.

I've thought carefully about whether a specific warning covering off the key features of cryptocurrency investment scams would have likely prevented any further loss in this case. And on the balance of probabilities, I think it would have. There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Mr A's payments, such as being assisted by a broker and seeing relatively large returns on an initial investment before being encouraged to invest more.

And what I've seen persuades me that Mr A was not so taken in by the fraudsters that he wouldn't have listened to the advice of Nationwide. And any warning tailored to the scam Mr A was falling victim to would have likely resonated with him given that the particular scam he was a victim of bore many of the hallmarks of similar scams. So, I think it is likely that a tailored warning would have caused enough doubt in Mr A's mind to uncover the scam and so prevent him from making any further payments to it.

In reaching my conclusions about what is fair and reasonable in this case, I have also considered whether Mr A should bear some responsibility for his loss. Mr A has said he saw no negative reviews of the investment company at the time, and I can see that any negative reviews or warnings regarding the company he believed he was investing with appear to have been from after the payment Mr A made. So, I've not seen anything that would have suggested to Mr A at the time that the company he was dealing with was not legitimate. I also note that the scheme was recommended by someone Mr A knew personally, which would have added another layer of legitimacy. And Mr A has said he had access to a professional looking trading platform which showed some profits, he was also able to withdraw some profits back to his cryptocurrency account, before reinvesting those funds.

Given this background, I don't think Mr A was partly to blame for what happened here. It follows that I don't consider it fair to say Mr A should bear responsibility for some of his financial loss.

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.

Putting things right

To resolve this complaint Nationwide should:

- Refund to Mr A the £4,119.60 lost to the scam;
- Pay 8% simple interest per annum on that amount from the date of the payment to the date of settlement.

My final decision

I uphold this complaint. Nationwide Building Society should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 January 2025.

Sophie Mitchell
Ombudsman