

The complaint

Mr and Mrs W complain that Nationwide Building Society didn't do enough to protect them from the financial harm caused by an investment scam, or to help them recover the money once they'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr and Mrs W held a joint account with Nationwide. In February 2023, Mr W met someone I'll refer to as "the scammer" who claimed to work for an investment company I'll refer to as "S". The scammer suggested they should invest in cryptocurrency, advising them to first purchase cryptocurrency and then load it onto an online wallet. Between 26 March 2024 and 10 May 2024, twelve payments were transferred to an account in Mr W's name from Mr and Mrs W's Nationwide account totalling £172,111.41.

Mr W could see what he believed were profits in the trading account, but he realised he'd been scammed when the scammer kept asking him for more funds and he was unable to make a withdrawal. Mr and Mrs W complained to Nationwide, but it refused to refund any of the money they'd lost because Mr W had paid an account in his own name.

Mr and Mrs W complained to this service and our investigator felt the complaint should be upheld. He noted Mr W was making high value payments to a new payee and so Nationwide should have questioned him about the payment. He explained that, even though Mr W had misled Bank C when it contacted him on 21 March 2024, he didn't think he'd have been able to provide the same explanation to Nationwide. It should therefore have warned him about investment scams and that this would have stopped the scam. He said Nationwide should refund the money Mr W had lost from the first payment onwards, but that the settlement should be reduced by 50% for contributory negligence.

Nationwide has asked for the complaint to be reviewed by an Ombudsman arguing that Mr W wouldn't have explained where the funds were being sent and why.

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 reached the same conclusion as our investigator. And for largely the same reasons.

I'm satisfied Mr W 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of the bank account, Mr W is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr W didn't intend his money to go to scammers, he did authorise the disputed payments. Nationwide is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Nationwide could have done more to prevent the scam from occurring altogether. It ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr W when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Nationwide to intervene with a view to protecting Mr W from financial harm due to fraud.

The payments didn't flag as suspicious on Nationwide's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr and Mrs W normally ran the account and I think they were. The first payment on 24 March 2024 was £23,300 to new payee, and as this was out of character for the account, I'd expect Nationwide to have questioned them about the payment.

When Bank C intervened before a £10,000 payment to Nationwide on 20 March 2024, the call handler asked Mr W why he was making the payment, and he said he was transferring the money to his own account to see if he could get a better interest rate. He also said he hadn't downloaded remote access software. Mr W was warned that scammers ask people to lie to their banks and that he wouldn't get his money back if it turned out to be a scam.

I've considered what might have happened if Nationwide had intervened and while I accept Mr W didn't disclose the real purpose of the payment to Bank C, he wouldn't have been able to say the same thing to Nationwide because the payee is a business-to-business banking platform which doesn't offer personal accounts. And I haven't seen any evidence that he was coached to give a more sophisticated response.

This was a large payment to a new, potentially high-risk payee and, given Mr W's age meant he ought reasonably to have been viewed as more susceptible to scams, I would expect Nationwide to have questioned him around the purpose of the payment and for his responses to have been tested and challenged appropriately. Had it done so, as I haven't seen any evidence of coaching, I think it's likely that he'd have either failed to give a satisfactory response or he'd have disclosed that he intended to buy cryptocurrency.

If Mr W had failed to give a satisfactory response, I would expect Nationwide to have asked him to attend a branch to discuss the payment further. Alternatively, I would expect it to have given him a detailed warning about cryptocurrency investment scams, covering some of the key features of cryptocurrency scams – including the involvement of a third party. I've thought carefully about whether this would have likely prevented any further loss and, on balance, I think it would have.

Mr W was being assisted by a third party, which is a major red flag, and I haven't seen any evidence that he was asked, or agreed to disregard any warnings, or that he expressed mistrust of Nationwide or financial firms in general. Neither do I think that the messages between Mr W and the scammer demonstrate a closeness of relationship that Nationwide would have found difficult to counter.

The weight of evidence that I've outlined persuades me that at this point in the scam, Mr W was not so taken in by the scammer that if Nationwide had provided him with an impactful

warning that gave details about cryptocurrency investment scams – either during the call or in the branch - and how he could protect herself from the risk of fraud, I believe it would have resonated with him. He could then have paused and looked more closely into the investment before proceeding and likely have decided not to proceed with the payment. So, I agree with our investigator that Nationwide should refund the money Mr and Mrs W lost from the first payment onwards.

Contributory negligence

In recent years instances of individuals making large amounts of money by trading in cryptocurrency have been highly publicised to the extent that I don't think it was unreasonable for Mr and Mrs W to have believed what they were told by the scammer in terms of the returns. In addition, they hadn't invested in cryptocurrency before and so this was an area with which they were unfamiliar - they wouldn't have known the returns were unrealistic or how to check the information they'd been given. This unfamiliarity was compounded by the sophisticated nature of the scam.

However, Mr and Mrs W ought to have considered that no investment is risk free and questioned why they weren't given any paperwork or why they were being required to communicate with the broker on WhatsApp. Significantly, Mr W misled Bank C about the purpose of the payment during the call he had with them on 20 March 2024 and had he disclosed the real reason for the payment, the scam might have been stopped at that point. So, I agree with our investigator that the settlement should be reduced by 50% for contributory negligence.

Recovery

I don't think there was a realistic prospect of a successful recovery because Mr W paid an account in his own name and moved the funds onwards from there.

Compensation

The main cause for the upset was the scammer who persuaded Mr W to part with his funds. I haven't found any errors or delays to Nationwide's investigation, so I don't think he is entitled to any compensation.

My final decision

My final decision is that Nationwide Building Society should:

- refund the payments from the first payment onwards
- this settlement should be reduced by 50% to reflect contributory negligence.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If Nationwide Building Society deducts tax in relation to the interest element of this award it should provide Mr and Mrs W with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 31 March 2026.

Carolyn Bonnell
Ombudsman