

complaint

I issued a provisional decision in this complaint about Nationwide Building Society on 21 July 2021. It contains the relevant background information and sets out my provisional findings. For completeness, a copy is annexed to this final decision.

background

In brief summary, I was minded to uphold this complaint about disputed transactions (for the purchase of binary options) on the basis that they ought reasonably to have triggered Nationwide's potential fraud alerts. If—in line with various regulatory duties (and good industry practice)—Nationwide had contacted Mr W before executing his payment instructions, most of his losses would probably have been prevented.

For example, a warning about the high-risk of scams associated with binary-options trading and the published warning about the merchant (72Option) would probably have caused Mr W to investigate such unlicensed, unregulated investments and/or the purported trader more closely — and stopped him from making further payments.

I did think Nationwide could reasonably have been triggered by the initial payment, so the total award I had in mind (net of interest and/or tax deductions) was £2,000.

The above is not a substitute for my full reasons, so I would urge the parties to re-read my provisional decision (below) before proceeding.

responses

Mr W did not have anything further to add and accepted the provisional decision.

Nationwide disagrees with my provisional decision and has made further submissions. I have carefully read and digested those submissions in full and I've summarised the key points, using Nationwide's points of dispute headings:

- *Was it a scam?* Mr W invested in a scheme that involved gambling in hope of making a profitable return. The non-return of his funds or any winnings is not, in itself, evidence that it was a scam and there may have been another reason the disputed payments were not returned to him. In order to fall within the definition of a 'scam' there needed to have been dishonest representations to Mr W about the purpose of the payments or who Mr W was paying. The IOSCO alerts do not describe or indicate 72Option was operating a scam. It is yet to be established conclusively some four years later that 72Option was operating a scam and so it would not have been reasonable for Nationwide to conclude this at the time of the payments.
- *Was Nationwide under a duty to intervene?* Some of the alerts postdated the payments. And the alert that was in place prior to Mr W's first payment stated 72Option was suspected of operating without authority under British Columbia legislation and binary options were not classed as securities or regulated financial products at the time of the payments. Nationwide fails to see how this alert could or should have prompted the Society to suspect that 72Option was trading fraudulently. The alert did not reference they were operating a scam. It simply recommended that customers should exercise caution when dealing with 72Option. The only visible alert was the one registered with British Columbia Security Commission and this alert was

not published on the IOSCO portal at the time.

- *Constructive notice* – the application of the doctrine of constructive notice to a banking transaction is inappropriate and incorrect. The doctrine of constructive notice is a principle developed through equitable law whereby a person without actual notice of some matter is, in certain circumstances (and, typically, where they have acted recklessly), treated as if they had actual notice of it. Mr W wanted to invest in binary options in order to make money and had carried out some online research. Nationwide cannot be held to have had knowledge of it when Mr W didn't have the opportunity to research binary options. Mr W did not realise that 72Option had no intention of returning his money until several months after the payments.

The FSA's 2012 consultation paper refers to gathering 'timely and detailed intelligence' about investment fraud typologies. It then goes on to list a number of sources which could feed into an investment fraud watchlist – including the IOSCO investor alert portal as a non-prescriptive example source for other jurisdictions. Nationwide is a UK based firm without established international operations. In those circumstances, expecting Nationwide to monitor and base payment interventions on a specific international database because that database is referenced in an FSA paper aimed at a wide variety of firms is not suitable or reasonable. The practicalities of monitoring alerts issued by foreign regulators and implementing automatic blocks is an onerous requirement and almost impossible to implement effectively because merchants can and do trade under a variety of names.

With a card payment, the only indication it receives to suggest the type of merchant is the 4-digit Merchant Category Code (MCC), in this case '6211' 'Security Brokers/Dealers'. This would be the same code used by stockbrokers and share trading firms and high value transactions are common. If Nationwide wanted to block a merchant, it would have to convert the merchant name on the customer's statement to something unique – it uses a combination of the Visa merchant ID and the acquiring bank ID. It's the equivalent of the sort code and account number. It wouldn't carry out this activity until it had identified a problem with a specific merchant affecting its members. None of the warnings suggested the firm was marketing in the UK and the FCA didn't issue their warning until March 2018. Nationwide doesn't think it's reasonable to anticipate warnings for its national regulator and act on information from foreign regulators that may be irrelevant to its members.

- *Unusual transaction* – It didn't find the disputed payments to be unusual and it doesn't understand how this was concluded. In July 2021, 517 Nationwide debit card members made a payment of £5,000 or more to MCC 6211 (Security Brokers/Dealers) and 124 of them made more than one payment (one in four). The total paid in July was £10m by 4,797 unique cardholders – an average of £2,099 and 1.3 transactions per member. None were fraud or scams, so it's a very low risk MCC.
- *Did Nationwide's failure to intervene cause the loss* – Nationwide does not understand or agree with the basis of my finding that Mr W wouldn't have continued with the payments if Nationwide had contacted him. The only information Nationwide could have provided at the time was derived from the IOSCO investor portal and there is no indication that Mr W would not have proceeded with the payments based on this, particularly in view of the fact that he had already been considering the investment and carried out his own research.

- *Did Mr W contribute to the loss?* Mr W had the benefit of researching 72Option prior to entering into the transaction, whereas Nationwide did not and was not required to. Mr W should have known there was a high level of risk and that he would not see a return on his funds in light of his research. He paid a total of £6,000 to 72Option which was a sizeable sum. There was no indication that Mr W was pressured into making a large payment at short notice. Therefore, the redress that Nationwide is required to pay should be reduced on the grounds that he contributed to his loss.

findings

I have reconsidered all the evidence and arguments in light of Nationwide's response in order to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I remain of the view that this complaint should be upheld – for the reasons that follow:

1. I addressed whether 72Option had operated a scam under point 3 of my provisional findings (below). I have taken account of Nationwide's response on this preliminary point. But it is wrong to suggest that the issue has to be determined conclusively. Even though considering issues of fraud or deceit, this is still ultimately a civil dispute, not a criminal trial – so I only have to decide matters on the balance of probabilities, not beyond reasonable doubt. It is a relatively low threshold. So I'm still persuaded that there is enough *credible* data for me to conclude, on balance, that 72Option was running a scam.
2. At the time of Mr W's payments, binary options companies operating within the UK – whether physically or remotely – required licensing by the UK's Gambling Commission. In December 2016, the Gambling Commission said '*An unlicensed operator is likely to be acting illegally. They will not abide by any code of conduct and have no incentive to deal fairly with you. Unlicensed operators are likely to use false names, false addresses and contact numbers – they can disappear with your money and without a trace, making recovery impossible.*' I've noted 72Option was not licensed by the UK's Gambling Commission, or in any other jurisdiction (so far as I'm reasonably aware), at the time it contracted with Mr W. I've also noted that several regulators published warnings about 72Option, including the FCA. I'm satisfied a regulator would require enough credible information to publish a warning about a company operating without registration. Registering an IOSCO warning would also require an additional step for that particular regulator as to warn other jurisdictions of its warning of a particular company. So I'm satisfied enough effort has been taken by various regulators to alert potential investors/regulators across multiple jurisdictions about dealing with 72Option.
3. I also pointed out in the provisional decision – which Nationwide has not contradicted – that there is quite a lot of hearsay or circumstantial evidence about this trader operating a scam. It would be unfair and unreasonable for an informal ombudsman scheme, not bound by strict rules of evidence, to ignore so much credible information. Again, this is not a criminal trial but semi-formal alternative dispute resolution. Taking all of this together, I am still persuaded 72Option was operating a scam.
4. The IOSCO states: '*The date next to the name of the IOSCO member is the date when the alert or warning was posted on this list.*' The British Columbia Securities Commission's warning about 72Option was published on the IOSCO investor alert

portal on 13 December 2016, so I do not accept Nationwide's assertion that the alert post-dated the disputed transactions in April 2017.

5. Nationwide suggests that it would be unreasonable and onerous for it to review information published by foreign regulators because it is a UK-based firm without international operations and this information may be irrelevant to its members. I reviewed ten Nationwide complaints – relating to payments taken between 2016-2018 – at random that fall within the category of a 'binary options scam'. Of those ten complaints, nine related to merchants operating overseas (including another 72Option complaint) and one complaint related to a merchant operating in the UK. I think it's safe to conclude that most scams that relate to binary options and Nationwide customers (that occurred within a particular timeframe) related to merchants based overseas. So at the very least, Nationwide ought to be aware of credible information that is published by its own regulator and regulators overseas.
6. I agree it would be an onerous task for Nationwide to trawl through each international regulator's individual register. But international regulators, as well as Nationwide's own regulator, regularly publishes warnings on a central list – being the IOSCO's investor alert portal and Nationwide's regulator (the UK's FCA) suggested this was a good source for firms to build their own watchlists. I don't think it is an onerous task for Nationwide to update its own internal watchlist within one month of regulator warnings being published as this ought to give it enough time to carry out the necessary steps internally. I take Nationwide's point that sometimes merchants operate under various names – but this point isn't relevant to Mr W's case as 72Option was the name listed on Mr W's transaction statements. Having concluded binary options scams were well documented by credible sources at the time of Mr W's payments and there was a published warning about 72Option on the IOSCO's investor alert list several months prior to his payments, I still find that Nationwide had constructive if not actual notice that the payee may not be legitimate and ought to have reasonably taken steps to flag the payment and investigate it further, including making contact with Mr W.
7. Regarding Nationwide's comments on the application of the equitable principle of constructive knowledge, this service has a broad 'fair and reasonable' jurisdiction which takes account of equitable principles (amongst other things). It is fair and reasonable (or equitable) for regulated firms to be deemed to have notice of certain facts in the public domain – and this is a stance ombudsmen have been taking since the inception of our statutory scheme in 2001 (and prior to that under relevant predecessor schemes).
8. In relation to the unusual and uncharacteristic payment, I found the payments ought reasonably to have triggered alerts because they were being made to a suspected scammer on an international watchlist, not because the amounts were particularly large. It is also important to appreciate that some smaller transactions may still flag as unusual or uncharacteristic for that particular customer and/or account depending on the relevant, recent history. Here, we had a near-octogenarian customer who suddenly started spending not insignificant sums with a high-risk merchant abroad that was subject to an international alert. This was out of character for him and, in my view, ought reasonably to have raised suspicions at Nationwide given its wide-ranging regulatory obligations to guard against the risks of fraud and financial crime.

9. Nationwide reference a review of several hundred customer payments made in July 2021 that were processed using the MCC 6211 (which was the MCC used in Mr W's transactions). Of these cases Nationwide didn't find any reported scams. As I explained in my provisional decision at point 8, Visa required all unregulated and unlicensed binary options merchants (like 72Option) to re-code under a 'high-risk' gambling MCC from 1 December 2018. Visa explained that appropriately licensed binary options merchants could continue to operate under MCC 6211. Based on this, Nationwide's findings of the payments it reviewed was unremarkable and not relevant to the matter at hand as Mr W's payments occurred in 2017, prior to Visa's re-coding expectation.
10. Nationwide suggests a warning from it would not have made Mr W do anything differently. That's because all it could have warned him about was the IOSCO's investor alert about 72Option. I don't agree. I'm satisfied the mention of Mr W trading in binary options ought to have sounded alarm bells for Nationwide. It ought to have been aware of common binary-options scams through its own customer complaints and information published by other credible sources as referenced in point 17 of my provisional decision, to have enabled it to have given Mr W an appropriate warning.
11. I've considered Nationwide's final point that Mr W should bear some of the loss because he researched 72Option at the time he transacted with it, so ought to have been aware of the high risks involved with binary-options trading. I don't place much weight on this point from Nationwide because of the information imbalance between financial professionals and ordinary consumers. Mr W was almost 80 years of age at the time he transacted with 72Option and I don't think he could have reasonably known it was a scam. Nationwide is more familiar with the level of sophistication involved with this type of scam and Mr W was prompted to pay more money onto his platform after seeing his trading account making profits. I don't think he could have reasonably known that what he was likely seeing was no more than a simulation. In Nationwide's submissions, it provided email conversations between 72Option and Mr W. In these conversations, 'Luke' from 72Option told Mr W on 13 April 2017 (prior to his Nationwide payments) that his *'funds will be insured under our risk free trade agreement. Meaning that if we experience any losses throughout the trades, the funds will be injected back into your account as a bonus from the firm. Making this a win win scenario'*. Unless prompted to think otherwise by a trusted source (such as his building society), I think Mr W was sufficiently satisfied at the time he deposited money with 72Option that his funds would be safe and managed by who he believed to be a financial professional. It follows that I remain unpersuaded that Mr W shares blame for what happened, so make no reduction in his award.

final decision

For the reasons set out above and before, I have decided to uphold this complaint. I therefore require Nationwide Building Society to refund to Mr W all of his stolen payments (totalling £2,000).

This was a current account, so Nationwide should add interest to that sum (less any tax properly deductible) at 8% simple per year, from the respective dates of loss to the date of refund.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 3 October 2021.

Dolores Njemanze
Ombudsman

copy of provisional decision dated 21 July 2021 -

complaint

Mr W complains about his building society, Nationwide Building Society. He says Nationwide failed to protect him from financial harm caused by a company called 72Option. He alleges they were scammers posing as binary-options traders, as a result of which he lost around £6,000.

Nationwide denies responsibility for the loss. Its position, broadly, is that Mr W authorised all the payments to 72Option and by the time he contacted it to report the scam, it was too late for a chargeback claim to be processed.

There were two disputed transactions of £1,000 each debited from Mr W's current account with Nationwide – linked to his Visa debit card. The remaining £4,000 was taken from an account Mr W held with another banking provider. Mr W believed he was trading in binary options—essentially a win-or-lose bet on the performance of commodities (etc)—and that he was making very good profits based on the information shown on his 72Option online platform. When Mr W tried to withdraw funds from his trading platform, he was unable to. Mr W now believes the platform was nothing more than manipulated software or a 'video game' and not linked to real-life trades. The total amount in consideration in this decision is the disputed Nationwide transactions totaling £2,000.

my findings

Upon reading all the available evidence and arguments from both parties, I have concluded that it would be fair and reasonable partly to uphold this complaint for the following reasons:

1. Not every complaint referred to us and categorised as a binary-options scam is in fact a scam. Some cases simply involve high-risk investment 'bets' on the performance of (e.g.) commodities or stocks that resulted in very disappointing returns or losses. Some binary-options traders promoted these products—which were not regulated by the Financial Conduct Authority ("FCA") or its predecessor at the time—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. *dishonestly* making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).
2. Banks, building societies and other Payment Services Providers ("PSPs") have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice (see its predecessor's 2012 consultation paper on investment fraud, below). So, the first question to resolve is whether this particular retailer/trader was actually a fraudster.

3. I am satisfied that 72Option were not carrying out legitimate binary-options trades but were instead dishonestly defrauding customers, e.g. by not actually making trades/bets with the money received from clients but simply manipulating their online 'trading platform' to show purported gains—with initial token pay-outs—in order to induce further 'investments' from victims such as Mr W. In the absence of evidence to the contrary, I have concluded this because:
 - a. In 2017, binary-options traders operating in the UK were required to be licensed by the UK's Gambling Commission — whereas Markets Cube were not. Nor were they regulated in any other jurisdiction so far as I am reasonably aware. This indicates they were operating illegally, probably with dishonest intentions. Legitimate firms tend to comply with regulatory requirements.
 - b. On 13 December 2016, a warning about 72Option was placed on the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"). The British Columbia Securities Commission of British Columbia reported that they were offering financial services in its jurisdiction without authorisation. Warnings from Australia and Hong Kong's regulators also published warnings in 2017 and the FCA published a warning in March 2018.
 - c. There are several reports in the public domain—e.g. foreign press and online forums—stating that 72Option were scammers. This hearsay is not in itself sufficient evidence of fraud. But in the context of known regulatory facts, it may fairly and reasonably be regarded as circumstantial evidence that helps build an overall picture of scammers dishonestly seeking gains at the expense of others.
4. Having concluded that this was a scam rather than just a bad bargain or poor investment advice, I must now go on to consider four more issues in order to determine the outcome of the complaint:
 - a. Did Nationwide deal with Mr W's chargeback claims fairly?
 - b. If so, were any of the disputed transactions still so unusual or uncharacteristic for Mr W and/or his account that Nationwide fraud alerts ought reasonably to have triggered some sort of intervention?
 - c. If triggered, would Nationwide's intervention have made a difference and prevented or reduced the loss?
 - d. And if so, was Mr W partly to blame for what happened such that it would be fair and reasonable to reduce compensation proportionately?

chargeback

5. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Nationwide) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder.
6. Mr W is upset because Nationwide refused to process his chargeback because it

says he was outside the 120-day time limits set by Visa.

7. In my judgment, it was not unreasonable of Nationwide to not attempt a chargeback. First, it was clear that Mr W reported his problem to Nationwide too late as he reported the problem in October 2017 which was more than 120 days after the date of his transactions. It's also clear that the problems Mr W experienced (that he couldn't withdraw his available funds) were not yet covered by the Visa chargeback rules. I am mindful that the Visa chargeback rules did not cover problems with withdrawals relating to binary-options (or forex) trading until 14 October 2017, i.e. prior to the disputed transactions: see *Visa Business News*, 26 October 2017:

Effective 14 October 2017, issuers may use Reason Code 53 to address cases whereby a binary options (or forex) merchant has imposed obstacles to prevent cardholders from withdrawing funds. This chargeback right is limited to the amount available in the binary option account at the time funds are requested. Issuers cannot charge back more than the original transaction amount, so capital gains from binary options trades cannot be paid out via the chargeback process.....

.....The 120-day chargeback time limit will be counted from the date the cardholder expected to receive the merchandise or services, rather than the date of the transaction, up to 540 days from the date of the original transaction.

8. Though not material to the circumstances of this case, it is worth adding for completeness that, from 1 December 2018, Visa's rules changed again to require binary-options merchants (and other "*high-brand risk merchants*") to be coded under Merchant Category Code ("MCC") 7995—Betting, including Lottery Tickets, Casino Gaming Chips, Off-Track Betting, and Wagers at Race Tracks. *Visa Business News* dated 6 September 2018 stated:

Visa has discovered that certain binary options, rolling spot forex trading, financial spread betting and contracts for difference merchants are being acquired in markets that do not require licensing or regulate merchant trading platforms. In addition, some of these merchants are selling into countries where local laws prohibit such transactions or require licensing by the relevant financial services authority.

9. Given that the disputed transactions in this case occurred in April 2017, before the changes to Visa's rules were published, Nationwide could only have successfully presented a chargeback claim if 72Option had expressly promised Mr W a guaranteed return contrary to the realities of such high-risk trading. And there was no evidence they had. So, declining to process a chargeback claim in circumstances where there was no dispute right available to Nationwide was neither an unfair nor unreasonable exercise of Nationwide's discretion.
10. For the reasons set out above, I am not persuaded that Nationwide acted unfairly or unreasonably in connection with the chargeback claim at the time Mr W presented his case, so I cannot uphold this complaint on that ground.

unusual or uncharacteristic activity

11. Nationwide is aware of our general position on a PSPs' safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again

here in detail.

12. It is common ground that the disputed payments were 'authorised' by Mr W for the purposes of the Payment Services Regulations 2009 ('the Regulations'), in force at the time. This is because they were made by Mr W using the legitimate security credentials provided to him by Nationwide. These must be regarded as 'authorised payments' even though Mr W was the victim of a sophisticated scam. So, although he did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of his account, Mr W is presumed liable for the loss in the first instance.
13. However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, 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 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 banks and building societies are generally more familiar with than the average customer; and
 - 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.
14. I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated firm such as Nationwide that Mr W's account was being subjected to unusual and uncharacteristic activity. There were reasonable grounds to suspect a fraud or scam, and therefore justify an intervention (such as phoning him in order to ask discreet questions about the nature and purpose of the payments).
15. First, regulated firms ought reasonably to take notice of common types of scams. As long ago as June 2012, the FCA's predecessor indicated—in its consultation paper entitled *Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims*—that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly to share "*timely and detailed intelligence*" with other banks, UK and overseas regulators, the police, etc. Whilst the regulator gave no specific timings, it is not unreasonable in my view to expect a large firm to update its watch-list and communicate internally to staff within, say, one month of an alert being posted by the FCA or IOSCO. In my judgment, such alerts should automatically trigger alarm-bells—and lead to the payment being paused—pending further enquiries (and a possible scam warning) to the payer.
16. In Mr W's case, there was a warning about 72Option on IOSCO's Investor Alerts Portal from 13 December 2016, which was before the first payment on 16 April 2017. It is not unreasonable to expect a large firm that regularly updates its internal alerts to include information about payees who had tried to carry out regulated activities without permission. I accept that the warning did not specifically relate to binary-options

trading; and it did not necessarily follow from the nature of the warning in isolation that these were fraudsters. But given the timing of the alert relative to the first payment, I think Nationwide ought to have automatically blocked it. Nationwide had constructive if not actual notice that the payee might not be a legitimate merchant — therefore, it would have been reasonable for it to have properly questioned Mr W before processing his first payment in order to satisfy itself that all was well.

17. If Nationwide had fulfilled its duties and carried out due diligence by contacting Mr W and asking suitably probing questions, there is no reason to doubt that he would have explained what he was doing. In such circumstances, whilst Nationwide had no duty to protect him from a bad bargain or give investment advice, it could have invited him to check whether the payee was registered with the Gambling Commission. It could have also explained its own customer experiences with merchants like 72Option in that customers would often be prevented from withdrawing available balances. After all, at that time, there was information in the public domain—which a building society ought to have known even if a lay consumer ought not—about the very high risks associated with binary options including many warnings of potential fraud (e.g. Action Fraud's June 2016 warning; the European Securities and Markets Authority's July 2016 warning; the Financial Conduct Authority's consultation paper of December 2016; and the Gambling Commission's December 2016 scam warning that "*an unlicensed operator is likely operating illegally*", and so forth).
18. There is no evidence that Nationwide provided Mr W with any meaningful warnings or gave him other reasons to doubt the legitimacy of the payments he was making. It was a missed opportunity to intervene.

causation

19. If Nationwide had asked Mr W what the payments were for and the basic surrounding context, it is likely he would have fully explained what he was doing and that everything had been done over the phone and online with his 'broker'. Nationwide did not need to know for certain whether Mr W was dealing with a fraudulent binary options trader or investing in a legitimate (albeit highly speculative) product; reasonable grounds for suspicion are enough to trigger a firm's obligations under the various regulations and principles of good practice. I consider there were such grounds here and, therefore, that Nationwide ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with unregulated, overseas binary options.
20. If Nationwide had given a warning, I believe that Mr W would have paused and looked more closely into 72Option before proceeding. There is no evidence that he was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that he would have made further enquiries into binary-options scams and whether or not 72Option were regulated in the UK or abroad. He could have discovered they were not and the various regulatory warnings about the risk of binary-options scams (see above). In other words, I am satisfied that a warning from his trusted building society would probably have exposed 72Option's smoke and mirrors, causing him to stop and prevent any losses.

21. Even if he had not worked out that this was a scam, it is likely that a warning would have prompted greater research into binary options, which in turn would have revealed the truth behind his supposed broker's (mis)representations — i.e. that they were not really regulated UK investments but highly-risky international bets more akin to a wager in which the broker must lose if he is to win. This would probably have stopped him in his tracks. But for Nationwide's failure to act on clear triggers of potential fraud or financial harm, Mr W would probably have lost no money.

contributory negligence

22. Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). In this case, I do not think that Mr W was to blame for what happened; that he did not foresee the risk of this sort of harm or any harm. At the time of his 'trading', there was information in the public domain about this particular trader but you needed to understand how to locate such information, as 72Option were still in operation. In any event, I do not place too much weight on general but arcane information in the public domain for reasons previously alluded to about the information imbalance between financial professionals and ordinary consumers.
23. Up until the point Mr W was prevented from withdrawing funds from his 72Option platform, his account had seemingly been steadily earning profits and he had no cause for concern. Unaware that this was one of the common deceptive tactics of scammers, I do not think he could have foreseen the risk that the company he was dealing with was a scam and the trading account he was viewing was likely to be a simulation.
24. In the circumstances, I do not think it would be fair to reduce compensation on the basis that Mr W should share blame for what happened.