

The complaint

Mr G complains that Nationwide Building Society (Nationwide) is refusing to refund him the amount he lost as the result of a scam.

Mr G is being represented by a third party. To keep things simple, I will refer to Mr G throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr G's friend had been investing with a business called Decokorp (X) having seen it advertised online via YouTube. As Mr G showed an interest in the investment opportunity his friend forwarded his information to X and Mr G received a call from it.

X appeared to be professional and knowledgeable offering to provide Mr G with a high level of success. Persuaded by X, Mr G agreed and made an initial payment (£1,034.05) into the investment. Mr G was in constant communication with X and could see his investment growing.

X then told Mr G that he could guarantee a \$100,000 return in just a few months if Mr G made a further investment of £5,220.38.

In April 2020 Mr G made a final payment into the scam (£6,231.86). The payment was made to fund some large American trades.

In mid-April 2020 Mr G's trading account showed a balance of \$145,000 and he decided to make a withdrawal. X explained that Mr G would first have to make additional payments before the withdrawal could be made. Mr G made these payments from an account he held at another bank but has still not received any funds.

Below is a list of the payments Mr G made from his Nationwide account:

Date	Payee	Payment method	Amount
24 March 2020	XCHANGEPRO+3728880324	Debit Card	£1,034.05
24 March 2020	Transaction fee	Debit Card	£28.44
27 March 2020	XCHANGEPRO+3728880324	Debit Card	£5,220.38
27 March 2020	Transaction fee	Debit Card	£143.56
10 April 2020	XCHANGEPRO+3728880324	Debit Card	£6,231.86
10 April 2020	Transaction fee	Debit Card	£171.38

Nationwide agreed to refund half of the payments Mr G made into the scam from the 27 March 2020 onwards and paid £200 compensation for the service Mr G received.

Our Investigator considered Mr G's complaint but thought Nationwide had done enough, so they didn't think the complaint should be upheld. Mr G disagreed, so this complaint has been passed to me to decide.

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 has not been disputed that Mr G has fallen victim to a cruel scam. The evidence provided by both Mr G and Nationwide sets out what happened. What is in dispute is whether Nationwide should refund the money Mr G lost due to the scam.

Recovering the payments Mr G made

Mr G made payments into the scam via his debit card. When payments are made by card the only recovery option Nationwide has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr G was dealing with X, which was the business that instigated the scam. But Mr G didn't make the debit card payments to the scammer directly, they were paid to a separate cryptocurrency exchange (XCHANGEPRO). This is important because Nationwide was only able to process chargeback claims against the merchant he paid (XCHANGEPRO), not another party.

The service provided by XCHANGEPRO would have been to convert or facilitate conversion of Mr G's payments into cryptocurrency. Therefore, XCHANGEPRO provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr G paid. As XCHANGEPRO provided the requested service any chargeback attempt would likely fail.

Should Nationwide have reasonably prevented the payments Mr G made?

It has been accepted that Mr G authorised the payments that were made from his account with Nationwide, albeit on X's instruction. So, the starting point here is that Mr G is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Nationwide should have been aware of the scam and stepped into question Mr G about the payments he was making. And if it had questioned Mr G, would it have been able to prevent the scam taking place.

The first payment plus transaction fee that Mr G made into the scam was for a relatively low value to what appears to be a legitimate business, so I don't think it was unreasonable that this payment didn't trigger Nationwide's fraud prevention systems prompting it to step in question Mr G about it.

The second and third payments Mr G made were of a higher value not in keeping with how Mr G normally operated his account so I think these payments should have caused Nationwide some concern and it should have stepped in.

Did Mr G contribute to his loss?

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 the circumstances, I do think it would be fair to reduce compensation on the basis that Mr G should share blame for what happened. Mr G has also told us that he was guaranteed a \$100,000 return following the second payment of just over £5,000. I think this should have been a red flag for Mr G and he should have realised at this stage that it was unlikely a genuine investment could guarantee a return of multiple times the initial investment value.

Mr G was also provided with a copy of X's "certificate of principles licence". A simple online search would have found this document to be fake.

Nationwide has accepted that it should have stepped in when Mr G made the second payment and so offered to pay back 50% of Mr G's loss from this point. As this is what I would have asked Nationwide to do in the circumstances, I don't think it would be reasonable for me to ask Nationwide to do any more than it already has.

Nationwide has also paid Mr G £200 compensation which I think is reasonable, and more than what I would have suggested had no compensation payment been made.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 12 April 2024.

Terry Woodham
Ombudsman