

The complaint

Mr F complains that Nationwide Building Society won't refund money he lost when he was a victim of an investment scam.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2020 Mr F fell victim to an investment scam. He came across a firm, which I'll refer to as 'K', online and he made payments to a legitimate crypto exchange before forwarding it on as part of the scam. The relevant payments (and associated fees) are:

Date (statement)	Type of transaction	Amount
16 June 2020	Debit card payment	£6,822.37
	Non-sterling fee	£203.99
8 July 2020	Debit card payment	£2,378.95
	Non-sterling fee	£71.13
16 July 2020	Debit card payment	£2,958.39
	Non-sterling fee	£88.46
2 September 2020	Debit card payment	£3,287.88
	Non-sterling fee	£98.31
2 September 2020	Debit card payment	£3,757.58
	Non-sterling fee	£112.35
Total:		£19,779.41

Mr F realised he'd been scammed when he contacted K asking to withdraw his money but was told, for this to happen, he needed to invest additional funds.

Mr F raised this with Nationwide but they explained they couldn't refund the payments as the merchant's bank said they were valid. Unhappy with this, Mr F complained to Nationwide but their position didn't change. Nationwide reiterated that their attempts to recover the funds by raising a VISA dispute wasn't successful as it was declined by the merchant's bank – with their appeals similarly unsuccessful. And the difficulty here was that Mr F authorised the payments as genuine and, after they blocked several of them to advise him of the associated risks, he continued with them. So, this was considered a customer loss.

The complaint was referred to the Financial Ombudsman, with our Investigator thinking it should be upheld in part. She said Nationwide should've done more to protect Mr F from the scam when they spoke to him – as part of their security checks - before processing the first payment. And that an effective intervention would've brought the scam to light as there was a warning published about K on the Financial Conduct Authority's (FCA) website about two weeks prior – to which she thought Nationwide should've advised Mr F to check before going ahead with the payment.

Our Investigator thought Mr F should bear some responsibility for his loss too. She said an internet search of K would've led Mr F to finding the FCA warning as it appears as the first

search result. So, she didn't think it was hard to find and that Mr F ought to have done some simple research on K besides relying on their website. Our Investigator thought it would be fair for Nationwide to refund 50% of the payments, plus 8% simple interest.

Nationwide agreed with our Investigator's recommendation. Mr F did not and so, the matter 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.

Having done so, I've come to same outcome as our Investigator and for largely the same reasons.

Mr F has provided substantial arguments for my consideration as to why Nationwide failed to protect him from the scam. I've given careful consideration to all the evidence provided. And so, I'd like to reassure Mr F that if I don't mention a particular point, it's not because I haven't considered it, but I've focussed instead on what I believe to be important to the outcome of this complaint.

As Nationwide has agreed to refund 50% of Mr F's losses, plus 8% interest per year, they appear to accept that they could've done more to prevent Mr F's losses arising from the investment scam. And having looked at what happened, I agree. This is because I think Nationwide ought to have carried out a more effective intervention before processing the first payment – which, in turn, would've led to the scam being uncovered and Mr F's loss being avoided. As this isn't disputed, I don't consider it necessary to set out my reasons for this in detail here – or respond to many of the points Mr F has provided in his submissions. Instead, my decision will focus mostly on whether I consider Mr F contributed to his own loss and should therefore bear some responsibility for it by way of contributory negligence (which might justify a reduction in compensation). I'll explain why I think he should.

Beyond Nationwide's requirement to protect customers from the possibility of financial harm from fraud, there's also an expectation that customers protect themselves too. But while I appreciate Mr F unknowingly fell victim to what appears to be sophisticated scam, and believed what K was telling him, I think it would've been reasonable to have expected Mr F to have carried out additional checks – beyond relying on K's own website - before proceeding with the investment.

I wouldn't necessarily expect a reasonable person to carry out a forensic investigation of an investment firm. But given Mr F was investing a significant sum of money, I think it's reasonable to have expected him to have carried out a basic level of due diligence – including, carrying out an online search of K. Having carried out my own historical internet search of K it seems, had Mr F done so, he would've likely come across the warning published by the FCA on 4 June 2020. This is because it appears as the top search result and so, it ought to have been easily discoverable by Mr F – which is supported by Mr F later coming across it on 1 September 2020 when he claims the scammers were providing misleading information and creating an atmosphere of confusion.

The FCA warning says:

“We believe this firm may be providing financial services or products in the UK without our authorisation. Find out why you should be wary of dealing with this unauthorised firm and how to protect yourself.”

It explained that, as a result, it would be unlikely a person would be able to get their money back if something went wrong as they wouldn't have access to the Financial Ombudsman, nor would they be protected by the Financial Services Compensation Scheme. The warning also provided more steps a person could take to protect themselves from scams.

I think, upon seeing this warning, Mr F ought to have been concerned that there was a risk the investment opportunity with K wasn't legitimate – thereby prompting him to take greater caution before proceeding. And this would've reasonably included taking additional steps such as seeking independent financial advice, carrying out a further review of K online and researching scams online (including the information available on the FCA's website).

Had Mr F done so, he would've likely realised K were using methods commonly used by scammers to defraud him. And I consider a financial adviser would've confirmed this too – given the identifiable 'red flags' of the investment and the FCA warning. Because of this, I think Mr F could've avoided falling victim to the scam had he taken some reasonable steps to verify K before proceeding with the investment opportunity. I therefore think Mr F is equally responsible for the loss he suffered. It follows that I think it would be fair and reasonable to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint – thereby refunding £9,889.71.

I understand Mr F has highlighted the impact this scam has on him. And that given Nationwide should've protected him from it, he feels substantial compensation – beyond the 50% refund and 8% simple interest – is warranted to recognise the extended distress and inconvenience he's experienced. While I'm sympathetic to Mr F's circumstances and don't wish to underestimate the effects of the scam on him, the main perpetrator for what happened is the scammer – not Nationwide. And while I agree Nationwide ought to have done more to protect Mr F from the scam, I equally consider Mr F should've done more too. I therefore consider the refund of 50% of Mr F's loss is fair. And, in these specific circumstances, I don't think it would be appropriate for me to award any further compensation. And although Mr F has told us what happened hindered his ability to explore alternative options, he hasn't provided any details of what he would've likely done had he not invested with K. I therefore consider the fairest way to recognise the loss of use of money Mr F has suffered is to award 8% simple interest.

My final decision

My final decision is that I uphold this complaint in part. I direct Nationwide Building Society to:

- Refund £9,889.71.
- Pay 8% simple interest, per year, calculated from the date of each payment to the date of settlement less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 2 April 2024.

Daniel O'Dell
Ombudsman