

The complaint

Mrs C has complained, via her legal representatives, that Nationwide Building Society won't refund money she lost as the result of an Authorised Push Payment (APP) scam.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision, which I issued last month.

My provisional decision said:

Mrs C opened a Flex Account with Nationwide Building Society (Nationwide) in June 2020. During May/June 2020 Mrs C started playing an online game. Through playing this game Mrs C met another player online, who I will refer to in this decision as "the scammer".

The scammer told Mrs C that that he worked offshore and that he had gold bars held at a storage facility in Canada. The scammer explained that the storage facility in Canada could no longer hold the gold bars for him and asked Mrs C if he could transfer the gold bars to her home address, so that she could then store them for him until he returned to the UK.

Mrs C agreed to do this and was then told by the scammer that to transfer the gold bars to Mrs C he needed to pay several fees to the Canadian storage facility.

The scammer then went on to explain that as he was working offshore he didn't have access to banking facilities, but did have access to a cryptocurrency account. As a result, Mrs C created another account in her name, which the account provider has said fed into a cryptocurrency wallet which Mrs C also held. I will refer to this other account as "Account B" in this decision.

On 14 August 2020 Mrs C attempted to make a payment of \$5,000 to a Canadian bank account. Nationwide intervened to stop this payment and spoke with Mrs C in person at a Nationwide branch and by telephone. As a result of her discussions with Nationwide Mrs C decided not to proceed any further with this payment.

Mrs C's representatives say that between 7 July 2020 and 6 July 2021 Mrs C made a total of 37 payments from her Nationwide account to her Account B. The total value of the 37 payments that Mrs C's legal representative has referred to is £81,663.53.

Mrs C's legal representatives say that the final payment from Mrs C's Nationwide account to

Account B was made on 6 July 2021. Mrs C then arranged to meet with the scammer on his return to the UK. But the scammer didn't meet with Mrs C as arranged and at that point Mrs C realised that she had fallen victim to a scam.

In September 2023 Mrs C complained to Nationwide, via her legal representatives. Mrs C claimed that Nationwide had failed to protect her from the scam and should repay all the transfers that she'd paid from her Nationwide account, so a total of £81,663.53, together with interest calculated at 8% and a compensation payment to cover the distress and inconvenience that she's suffered.

Nationwide responded to Mrs C's complaint in October 2023. They didn't uphold Mrs C's complaint saying that the payments to the scammer were sent from her Account B which Mrs C had opened herself and which she had access to, and therefore Mrs C's loss had come from an account held outside of Nationwide.

Mrs C wasn't happy with Nationwide's response to her complaint, so she brought it to the Financial Ombudsman Service, again via her legal representatives. One of our Investigators reviewed Mrs C's complaint. Their view was that Nationwide hadn't done anything wrong, so didn't uphold her complaint. Mrs C didn't agree with our Investigator's view so asked for her complaint to be brought to an Ombudsman.

What I've provisionally 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.

In line with the Payment Services Regulations 2017 (PSRs), Nationwide is expected to execute authorised payment instructions without undue delay. It's agreed Mrs C authorised the payments she is disputing, albeit Mrs C did so due to being tricked by a scam. So the starting position is that Mrs C is liable for them.

That said, there are circumstances when it might be appropriate for Nationwide to take additional steps before processing a payment. Such as when there are grounds to suspect it presents a fraud risk. That might occur when a payment is significantly unusual or uncharacteristic compared to the normal use of the account. And/or if the account activity fits a known pattern of fraud.

Mrs C's Nationwide account was opened in June 2020, which was a month before Mrs C's legal representatives say she started making payments to the scammer. Mrs C has said that the Nationwide account was opened so that she could have a bank account in her name only.

Mrs C also opened Account B, again in her name only, outside of Nationwide, which was then used to feed into a cryptocurrency wallet.

Mrs C's legal representatives say that the first two payments from Nationwide were made on 7 July 2020 and then 20 July 2020. These two payments were for £500 each, with a further £1,000 being sent on 4 August 2020.

I've seen statements for Mrs C's Nationwide account for July and August 2020 which show transfers for these amounts being made to an account in Mrs C's name, but no further details on the account that the payments are made to are given on these statements, the only reference is Mrs C's name.

I've also seen a spreadsheet of the transactions completed on Account B. This spreadsheet has been provided by the provider of Account B. However, this spreadsheet shows that the first payments in and out of Account B were made on 21 August 2020, which was after Mrs C tried to make a transfer from her Nationwide account to a Canadian bank account. I've therefore not seen any evidence to show that the payments that left Mrs C's Nationwide account on 7 July 2020, 20 July 2020 and 4 August 2020 did go into Account B. However, even if these payments did go into Account B I don't think that Nationwide would've had cause to view these payments as suspicious.

Mrs C's legal representatives also claim that a payment of £500 was sent by Mrs C from her Nationwide account to Account B on 3 September 2020, together with a payment of £33.30 sent on 11 September 2020 and £200 sent on 10 October 2020. However, these payments do not show on the spreadsheet that I've seen for the transactions completed on Account B.

I've therefore also not seen any evidence to show that these payments were made into Account B from Mrs C's Nationwide account. However, even if these payments did again go into Account B, I don't think that Nationwide would have had cause to view these payments as suspicious.

On 14 August 2020 Mrs C tried to make a payment of \$5,000 to a Canadian bank account. Mrs C went into a Nationwide branch to make this payment, but Nationwide stopped this payment being made and spoke with Mrs C in person at their branch. As a result of this discussion Nationwide froze Mrs C's account to prevent any payments being made.

Nationwide then had two telephone conversations with Mrs C on 17 August 2020 about the above payment. I've received recordings of these telephone conversations and have listened carefully to them both.

In the first call Mr C telephones Nationwide to say that her bank account has been frozen following discussions that she had with the manager of her Nationwide branch. Mrs C explains that this is because the manager was concerned that she was trying to make a transfer to a fraudster's bank account. Mrs C explains that she now wants to get her bank account back and forget everything.

The Nationwide representative who Mrs C speaks to asks her if she agrees with their concern about her proposed bank transfer, to which Mrs C replies yes. The representative also explains that if money had been sent to a fraudster's account, then there would be nothing that Mrs C could do to get it back. They then explain that documents about scams will be emailed to Mrs C and that they will speak to the case handler that has been assigned to Mrs C about having her bank account unfrozen.

The same Nationwide representative then calls Mrs C back later that day. They again explain to Mrs C that she would likely lose her money if she did proceed with the bank transfer and asks Mrs C again if she understands online fraud. Mrs C confirms that she does and goes on to say that thankfully she hasn't done anything on this occasion. Mrs C confirms that she now wants to forget everything and have her bank account unfrozen. Mrs C is told that if she has any future concerns then she has the contact telephone number for Nationwide.

Mrs C's legal representative has said that Nationwide did question Mrs C about the payment that she tried to make to a Canadian bank account, but this questioning was extremely ineffective as Mrs C believed this to simply be a tick box exercise. But having listened to the above telephone calls I don't agree with that characterisation. I think that the Nationwide branch manager must have been sufficiently concerned about the transaction after questioning Mrs C that they intervened to stop it.

Mrs C also explains to the Nationwide representative she spoke with by telephone why her bank account was frozen, so she is aware that Nationwide was concerned that her bank transfer would be paid to a fraudster's, or scammer's, account. Mrs C also says that she agrees with this concern and understands that she would not be able to get her money back if it had been transferred. Mrs C also says that thankfully nothing was transferred and now wants to forget about this incident.

My impression from these calls is that Mrs C understood that if she had completed the transaction then she would have been victim to a scam and that she will now not go ahead with this transaction, or any other transaction with the scammer. Mrs C is also sent information about scams by email and has contact details for Nationwide if ever she has any future concerns about potential scams.

I therefore think that Mrs C was telling Nationwide that she agreed with their concerns, which meant that Nationwide didn't reasonably have any cause to think that Mrs C would continue with making payments to the scammer.

Unfortunately, Mrs C did then proceed to make payments to the scammer over the following months, as I've detailed above. I think it's reasonable to assume that Mrs C did this, despite the warnings from Nationwide, because she was by then sufficiently under the spell of the scammer. I also think, because of this, that even if Nationwide had intervened again to stop a payment being made from Mrs C's Nationwide account to her Account B, it's reasonable to assume that Mrs C would still have continued making payments to the scammer.

Mrs C legal representative has claimed that Nationwide should have intervened on these further payments, and as an example has highlighted the payment of £2,995 sent on 21 August 2020. But this payment was sent four days after Mrs C's bank account was unfrozen, and she'd had discussions with Nationwide as I've detailed above, when I think that Mrs C told Nationwide that she understood and agreed that the payments would be made into a scammer's account.

Mrs C has also said: "the scammer told me to open a crypto account to send funds. This was probably after I had made this first payment to the Canadian account. My argument is that the bank should have queried transactions after the Canadian payment as there will still large amounts leaving my account and going to the crypto account. This should have been flagged up".

But I don't think this is right, the payments leaving Mrs C's Nationwide account did not show as being made to a "crypto account". Mrs C's legal representative has said that Mrs C's recollection is that she didn't put any reference in for the payments being sent from Nationwide to Bank Account B, but instead "her name was probably used as default".

Having seen Mrs C's monthly Nationwide statements then this is correct. This meant that when payments were being sent from Mrs C's Nationwide account, the payment reference used was her own name. I think it's reasonable that when payments were then made from Mrs C's Nationwide account, with her name as the reference, then Nationwide would have understood that Mrs C was sending monies to another account held in her own name. I therefore think it's unclear that Nationwide would have known that the payments leaving Mrs C's account would've gone into a crypto account, given the reference on these payments.

I also think that given the discussions Nationwide had held with Mrs C it wasn't unreasonable that they then didn't intervene when Mrs C subsequently made transfers from her Nationwide account to another account held in her name.

I also think it reasonable to assume that after Nationwide had stopped Mrs C from making the transfer to the Canadian bank account, Mrs C then opened Account B so that she could then make payments to the scammer, in spite of the warnings she'd received from Nationwide. I'm therefore not persuaded that even if Nationwide had intervened again to stop the payments that Mrs C was making to Account B, this would have succeeded in preventing Mrs C's loss.

The payments that Mrs C's legal representatives say that she did complete from her Nationwide bank account were all in sterling and were to another account held in her name.

The payments were made over a twelve-month period and had no regularity or pattern to them. There was also no instance of several large sums being transferred on a single day.

I therefore also don't think that there was anything obvious in the transfers that Mrs C made from her Nationwide account that would have flagged to Nationwide that she was being subject to a scam.

Mrs C's lawyers has also claimed that Nationwide should have recognised that Mrs C was vulnerable and should therefore have applied additional checks when payments were being sent from her account. Her lawyers have explained why they think that Mrs C was vulnerable, but I haven't seen any evidence to show that Nationwide were ever made aware of this information by Mrs C. I therefore think it's reasonable that Nationwide didn't apply any additional checks in this case.

On balance, I'm of the opinion that Mrs C set up her Nationwide account so that she could then subsequently transfer monies across to her Account B, which could then feed into a cryptocurrency wallet. I also think that Nationwide had been sufficiently concerned when Mrs C attempted to make a transfer of \$5,000 to a Canadian bank account that they intervened to stop the transfer.

Mrs C's Nationwide account was then only unfrozen following telephone conversations with Mrs C when she acknowledged that the transfer to Canada was most likely part of a scam and confirmed that she agreed and understood this and that if she did send money then it was likely that this would be lost. But Mrs C continued to send payments to the scammer.

I therefore don't think that Nationwide has done anything wrong and as a result I don't think it would be fair to expect Nationwide to refund Mrs C's loss, or to take any further action to resolve her complaint. I am therefore unable to uphold Mrs C's complaint.

My provisional decision

My provisional decision is that I don't uphold Mrs C's complaint against Nationwide Building Society.

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.

Both Nationwide and Mrs C's legal representatives have responded to my provisional decision.

Nationwide has said that it has no further information or comment to add.

Mrs C's legal representatives have said that Mrs C *"rejects my provisional final decision and would like a final decision to be made. This is due to the bank's ineffective intervention - it was clear that there were concerns about this being a scam, yet Nationwide then continued to let her transfer through further funds, despite the bank having the ability to stop them completely"*.

I have noted the above comment made by Mrs C's legal representatives, but in my provisional decision I had explained why I didn't think that Nationwide had done anything wrong. In my provisional decision I'd also considered all the evidence and information provided by Mrs C's legal representatives.

I note that Mrs C's legal representatives still say that Nationwide was at fault. However, Mrs C's legal representatives has not provided any new or further information or evidence for me to consider, and as a result I see no reason why my view should change from that set out in my provisional decision above.

I therefore remain of the view that Nationwide hasn't done anything wrong and as a result I don't think it would be fair to expect Nationwide to refund Mrs C's loss, or to take any further action to resolve her complaint. I am therefore unable to uphold Mrs C's complaint.

My final decision

My final decision is that I don't uphold Mrs C's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 12 September 2024.

Ian Barton
Ombudsman