

The complaint

Mr N and Miss B are unhappy Nationwide Building Society (“Nationwide”) has declined to offer them a refund after they were the victims of an investment scam.

What happened

The details of this case were clearly set out by our investigator when she wrote to Nationwide upholding Mr N and Miss B’s complaint. As such, the facts are well-known to both parties, so I don’t need to repeat them at length here. However, in summary:

- In June 2020, Mr N and Miss B were looking to invest some of their savings when they registered their interest with a company who I will refer to as “Company T”.
- Mr N and Miss B were then contacted by Company T and were persuaded to invest in a 1 year UK-based bond that proposed to offer a return of 8%.
- Mr N and Miss B checked the FCA website to make sure the company they were communicating with was legitimate. Company T were listed on the FCA website and had no fraud warnings listed against them. Mr N and Miss B felt reassured they were dealing with a genuine company. However, unfortunately, and unbeknown to Mr N and Miss B, they were actually speaking with fraudsters who were operating as a ‘clone’ of the legitimate Company T.
- Having been sent some additional information and literature about the bond, including the sales agreement, Mr N and Miss B made a payment of £10,000 to an international account via their online banking.
- Around a week later, Mr N and Miss B tried contacting Company T to make sure their payment had been received but they had some trouble getting in touch – their phone calls were not being returned.
- Concerned, Mr N and Miss B decided to check the FCA website again and this time, they found a warning had been added just after they had made the £10,000 payment. At this point, Mr N and Miss B realised they had likely been the victims of a scam and contacted Nationwide.
- Nationwide has not provided us with its file, despite numerous requests, so I have very limited information about its side of the story. However, in its final response letter, it said it had issued an indemnity to the bank the payment went to on behalf of Mr N and Miss B in attempt to recover their funds but it hadn’t received a response and the recovery was unsuccessful.
- Nationwide declined to offer Mr N and Miss B a refund as they had authorised the payment themselves.
- Nationwide went on to say that during the payment process, Mr N and Miss B were asked to select the reason they were making the payment. It said Mr N and Miss B had selected ‘*investment*’ and so they would have seen the following warning message pop up on their screen prior to the payment leaving their account:

“LOOK OUT: Criminals are using COVID-19 to their advantage. Take time to check any opportunities offered are genuine.

Does the opportunity seem too good to be true?

Were you contacted unexpectedly, or are you feeling pressured to invest? Have account details been provided by email?

If yes to any of the above, it's likely to be a scam and you should stop now.

Before you commit to any investment:

Check the FCA warning list and follow their advice.

Search online reviews, ensure you have all the paperwork you'd expect and check for any other websites under the same company name."

Mr N and Miss B bought their complaint to this service and one of our investigators looked into things. She thought the complaint should be upheld in full for the following reasons:

- She pointed out that the largest 'faster payment' to debit Mr N and Miss B's account in the months prior to the scam payment was £3,000. The scam payment of £10,000 was more than three times its value.
- Mr N and Miss B hadn't carried out any international payments in the months prior to the scam payment and so this activity was not in line or consistent with their usual banking activity.
- Due to the unusual nature of the payment, Nationwide ought to have been concerned that Mr N and Miss B might've been at risk of financial harm and so they should have contacted them about the purpose of the payment before processing it on their behalf.
- The investigator listed a number of questions that she felt it would have been appropriate for Nationwide to have asked at this point, such as the reason for the payment, the expected rate of return and the reason for the payment going abroad when the bond was supposedly based in the UK.
- She thought that had Nationwide asked the above questions, the scam would most likely have come to light. The circumstances leading up to the payment had all the hallmarks of a common scam - it didn't make sense that the funds were being sent overseas and the proposed returns were somewhat unrealistic.
- Our investigator said that had this been pointed out to Mr N and Miss B at the time, they wouldn't have agreed to proceed with the payment and their losses would've been prevented.
- Our investigator recommended that Nationwide refund the £10,000 payment to Mr N and Miss B alongside their savings account interest rate (1.77%) to compensate them for the amount of time they had been out of pocket.

Nationwide responded to our investigators view to say they would be willing to offer Mr N and Miss B half of the £10,000 payment plus interest, but they didn't think they should bear responsibility for the whole amount. Nationwide said this was because they didn't think Mr N and Miss B had acted reasonably – the proposed return rate of 8% was 'too good to be true' and the payment being made to an overseas account should have concerned Mr N and Miss B and put them on notice that something might not be quite right - but they proceeded with the payment regardless and therefore they should bear responsibility for some of the loss too.

Mr N and Miss B did not accept Nationwide's offer and our investigator wrote to Nationwide again. This time she pointed out that whilst the rate of return was high, it

wasn't so wholly unrealistic that it should have caused Mr N and Miss B concern. She also didn't think that the international payment would have struck a chord with Mr N and Miss B either. Our investigator pointed out that Mr N and Miss B's had checked the FCA register and the company they were dealing with had, on the face of it, appeared legitimate. Nationwide was the expert in such matters, not Mr N and Miss B.

Nationwide responded to ask for some additional information. Our investigator pointed out that Nationwide had been considering the complaint for over a year and this information, if required, should have been requested prior to the complaint being brought to this service. She asked Nationwide to respond to her opinion by 19 May 2022. That deadline has passed and, a week later, Nationwide has still not responded. As such, the case has been escalated to me for a final decision.

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.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the *Financial Conduct Authority Handbook* – that we may give case-management directions and fix or extend deadlines; and that we may: ...

reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that...

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint;

I've therefore concluded that, in the absence of a response from Nationwide to the investigator's further findings, it is fair and reasonable to proceed on the basis of the evidence we already have.

I've considered whether Mr N and Miss B ought to have been fully reimbursed by Nationwide and I think they should. I agree that the £10,000 payment was unusual and out of character for their account and it should have prompted further contact from Nationwide. Had this contact have taken place, I'm satisfied that Nationwide, as the industry expert, would've identified that this payment was likely being made as a result of a scam and it could have been prevented – preventing Mr N and Miss B from losing £10,000. I've also considered whether I think Mr N and Miss B acted negligently in any way when making the payment and I'm not satisfied that they did, for substantively the same reasons the investigator has already explained.

Putting things right

For the reasons set out by the investigator and above, I've decided that Nationwide Building Society ought to pay Mr N and Miss B:

- the total balance of the money lost through the scam (£10,000) within 28 days of receiving notification of their acceptance of my final decision; plus,
- interest at the savings account rate of 1.77% (less any tax properly deductible) from

the date the payment left Mr N and Miss B's account to the date of settlement.

My final decision

I uphold Mr N and Miss B's complaint about Nationwide Building Society, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Miss B to accept or reject my decision before 24 June 2022.

Emly Hanley
Ombudsman