

The complaint

Mr R has complained Nationwide Building Society won't refund money he lost from his accounts after being the victim of an investment scam.

What happened

In 2018 Mr R was searching online for investment opportunities to counter low bank interest rates. He filled in an online form and got a call from someone purporting to work for a company who could assist Mr R (who I'll call A). A told Mr R that they had a low-risk opportunity for him to invest in a three-year bond with a commercial development company (who I'll call E). This would pay 9-12% interest a year.

Mr R was sent a glossy brochure showing what E offered. He also checked out E's status at Companies House. In July 2018 Mr R went into his Nationwide branch and made two separate £5,000 bond purchases. He received appropriate certificates from A which he felt confirmed these as genuine investments.

Nearly a year later A contacted Mr R again. They had another opportunity for him to invest with E. This bond would pay 12.58%. Mr R paid a further £5,000 in two amounts of £3,500 and £1,500 from his other Nationwide current account. Like the previous two payments in July 2018, Mr R went into his branch to make these payments.

Mr R then found he couldn't contact A on the details he held for them. He tried to contact E too but was unsuccessful. Mr R then discovered that like others he'd been the victim of a scam. A had been wound up in May 2019 following an investigation by the Financial Conduct Authority.

Mr R asked Nationwide to reimburse him. He felt they should have intervened and provided him with appropriate warnings as these were unusual transactions. He also felt as the transactions in 2019 were made after the Contingent Reimbursement Model Code was in place, Nationwide should refund him as the victim of a scam.

Nationwide couldn't see any record of the two transactions in 2019. They also noted the two payments in 2018 were carried out in branch following proper authentication by Mr R. They also noted that these payments were not at all out of character as Mr R had made a number of large-value payments both before and after the two payments in July 2018. Branch staff had held lengthy discussions with Mr R warning him of potential scams. He had always insisted that the payments should be made.

Mr R brought his complaint to the ombudsman service. Our investigator felt that no further intervention by Nationwide would've stopped Mr R from making these payments. He also found no evidence of payments in 2019.

Still dissatisfied, Mr R has asked an ombudsman to consider his complaint. His representative felt Nationwide should have been alert to the fact that A had been wound up as a scam by the time payments were made in 2019.

I completed a provisional decision on 2 May 2023. I was able to identify the two disputed transactions made in June 2019. I believed these should be refunded by Nationwide.

Mr R accepted this outcome, as did Nationwide.

I now have all I need to complete the 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.

Having done so, the outcome in my final decision remains the same as that in my provisional decision. What follows matches the arguments in my provisional decision as both Mr R and Nationwide accepted this outcome.

I don't dispute Mr R was scammed and has lost money he'd been hoping to invest. He has my sympathy about what he has gone through.

There's no dispute that Mr R made and authorised the payments. Mr R believed he was buying investment bonds with E.

I'm satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Nationwide has an obligation to follow Mr R's instructions. So in the first instance Mr R is presumed liable for his loss. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that Nationwide should:

- have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- have had systems in place to look out for unusual transactions or other signs that might indicate that 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 financial institutions are generally more familiar with than the average customer.
- 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 its customers from the possibility of financial harm.

Mr R fell victim to an investment scam. These unfortunately aren't particularly unusual.

I have reviewed what happened to Mr R. I've also considered whether Nationwide should have taken additional steps before processing any of the payments which might have included providing warnings to Mr R.

Nationwide has confirmed they do have mechanisms in place to check unusual transactions. In Mr R's case, payments were made in his branch. I can see staff within the branch knew Mr R and challenged him about the payments he was making a number of times. There don't

appear to be detailed branch notes about what exactly these challenges involved but there is testimony from branch staff which I have considered.

It is clear from the testimony I've seen from Mr R and the evidence shared by Nationwide, that after receiving nearly £100,000 into his current account in late 2017, Mr R was looking for a range of different investment opportunities. In the early part of 2018 Mr R had spent money on some home improvements. Then in June 2018, Mr R made an investment with a government-backed savings vehicle, as well as making two other substantial investments of £25,000 and £10,000.

By the time Mr R went into branch in July 2018 to make the two £5,000 payments to E, it could be argued that a pattern of usage – the occasional investment payment – had emerged. In fact these payments are lower in value than the payments Mr R was making in June. And there's no evidence – at that time – that these payments were leaving Mr R without funds.

The testimony from branch staff is enlightening. This includes *"there have been several times over the years ... refused to send payments for him"*. Mr R was told on more than one occasion that the companies may not have been genuine, but he was *"almost impossible to convince most times"*. It appears Mr R became aware of the steps he could take to avoid being challenged and was on occasion *"coy"* and refused to explain what the funds were for.

Nationwide has been unable to provide detailed contact notes about exactly what happened at the time Mr R was trying to make these disputed payments and the warnings they may have given. However I am satisfied that Mr R was aware that he could be making risky investments or was being scammed and would have ignored any warnings he was given. It's clear that he insisted on more than one occasion that payments were made as he instructed.

Mr R's representative has suggested that more should have been done at this stage to demonstrate to Mr R that he was the victim of a scam. However I'm satisfied with the steps Nationwide took to identify potential risks to Mr R.

I have considered, in the light of Nationwide's warnings and likely knowledge, whether they should have stopped Mr R from making the early payments at all. But I don't believe they acted improperly here.

In this instance I believe it was more than likely Mr R insisted that he was perfectly capable of making his own decisions to manage his money. His insistence would have influenced Nationwide in ensuring they followed his payment instructions.

I've also considered whether Nationwide did enough after it was notified about the scam?

I have limited evidence of what Nationwide did. However by the time they carried out any investigation, it was more than three years after the initial payments were made. I think it is most unlikely that there was any chance of Mr R recouping any funds through Nationwide's actions. Since A was dissolved in 2019, I am satisfied there is limited opportunity for any funds to be available.

Overall I believe Nationwide took sufficient steps to protect Mr R in 2018 and I can't fairly tell it to refund £10,000 to Mr R.

There has been to-ing and fro-ing about the two payments of £3,500 and £1,500 made in June and July 2019. There was initially no evidence that these payments came from Mr R's Nationwide current account. I'm satisfied the statements for the account ending 735 show no debits of this nature. Mr R's representative has since provided us with copies of bill payment

requests he made within branch. The account details differed so I went back to Nationwide to clarify whether Mr R held another account with them. They confirmed he did and provided statements for an account ending 140 to show that two payments were made to E on 28 June and 3 July 2019.

I note with concern that despite Mr R's representative telling Nationwide what they were complaining about in early 2022, including these two payments, they were never correctly identified. I'm now in no doubt Mr R did indeed make these two payments as he claimed. Whilst Nationwide didn't properly consider the payments in 2019 as they were – rather bizarrely – unable to identify them, I'm satisfied I can come to a conclusion about them. These were part of Mr R's original complaint.

There's no dispute these payments were domestic payments made after the Contingent Reimbursement Model Code came into effect on 28 May 2019. Nationwide is one of the original signatories to the Code.

Putting things right

I'm satisfied these payments would fall under the Code. I believe it's fair and reasonable to ask Nationwide to refund £5,000 to Mr R.

I am also asking Nationwide to add 8% simple interest to that amount from the date the two amounts debited Mr R's account until the date of settlement.

My final decision

For the reasons given, my final decision is to instruct Nationwide Building Society to:

- refund £5,000 to Mr R; and
- add 8% simple interest a year to £3,500 from 28 June 2019 and to £1,500 from 3 July 2019 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 July 2023.

Sandra Quinn
Ombudsman