

## **The complaint**

Miss C complains Nationwide Building Society didn't do enough to protect her when she fell victim to an investment scam.

## **What happened**

Miss C has a current account with Nationwide and has been a customer for over 30 years.

In 2018 Miss C paid £64,950 towards what she believed was a genuine hotel investment scheme. Miss C made two payments – the first one (£5,000) was a deposit and the second one (£59,950) was the balance due. Miss C says she was meant to receive a guaranteed rental income for five years in exchange for her investment and that the room she'd invested in would be bought back at the end of the five-year period with a guaranteed return.

Miss C says she received quarterly rental income she'd been promised until January 2020 – although not always on time. In mid-April 2020, however, she says she was told that the quarterly payments would be suspended until the hotels that were part of the scheme were open again. Miss C says that this wasn't part of the original deal – that she'd been told she'd receive rental income regardless of occupancy – so she sought assurances.

Miss C says she started to suspect she'd been scammed after she'd didn't get assurances she sought. To make matters worse, Miss C received an email in July 2020 saying that she'd fallen victim to a scam. The email came from a third party claiming that the scheme she'd invested in was similar to others that had collapsed and had been shown to be scams.

In September 2020 Miss C contacted Nationwide to say that she believed she'd fallen victim to an investment scam. Nationwide looked into Miss C's claim and concluded that she'd made a bad investment – which hadn't been helped by Covid – rather than been scammed. Nationwide says it closed Miss C's claim having confirmed with the recipient banks that none of her funds remained so it wouldn't have been able to help her get her money back in any event. Miss C says she didn't hear back from Nationwide, nor did it ask for documentation.

In March 2023 Miss C complained to Nationwide saying that it hadn't done enough to protect her from the scam and that she would have been able to get her money back had it taken swifter and more decision action at the time. Nationwide looked into Miss C's complaint and said that it wouldn't be reimbursing her as it wouldn't have been able to detect the scam at the time. Miss C was unhappy with Nationwide's response and complained to us.

One of our investigators looked into Miss C's complaint and agreed that Nationwide should have asked her what the two payments were for as they were unusual. Had it done so, however, our investigator thought that Miss C would have been able to satisfy Nationwide that the payments were going to what appeared to be a genuine investment – given the documents she's received, including a legitimate looking sales brochure and contracts regarding the investment in question, and the answers she would have given. In the circumstances, our investigator didn't think it would have made a difference had Nationwide intervened at the time. So, they didn't recommend that Miss C's complaint be upheld.

Miss C was unhappy with our investigator's recommendations. She said that Nationwide hadn't intervened at all at the time, and so she wanted to know what measures if any it had in place at the time. She said that she wouldn't have made the payments had Nationwide asked her the same questions it asked when she complained in March 2023. She also said that she wouldn't have been able to show Nationwide the contracts at the time she was making the payments as she didn't receive those until later. In addition, she said that she didn't agree that she'd made a bad investment that hadn't been helped by Covid and that she had evidence showing that this was a scam from the outset. Miss C asked for her complaint to be referred to an ombudsman for a decision. Her complaint was passed to me.

### **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.

Miss C has made a lot of good points in the course of complaining to us and is clearly really disappointed with Nationwide. She clearly feels that she wouldn't have made the payments in 2018 had Nationwide asked her the same questions it asked when she complained in March 2023 and / or that she would have got her money back had Nationwide taken her complaint more seriously in September 2020. She's right that Nationwide didn't intervene when she made the payments, despite the fact that they were unusual, and she's clearly unhappy about that too.

I can understand why, in the given what I've just said, Miss C has asked us what controls Nationwide had in place in 2018. Our approach in a case like this is, however, to ask:

- a) should the bank have intervened; and
- b) if so, would that have made a difference.

And that's the approach I intend to take to this complaint. Before doing so, I do think it's worth saying that these payments were made at a time when banks weren't necessarily expected to do as much as they're expected to do now. So, I wouldn't, for example, necessarily have expected Nationwide to ask the same questions it asked Miss C when she complained in March 2023. It's important to consider what Nationwide should have done at the time, and what would likely have happened at the time.

I accept that Miss C didn't have the contracts at the time she made the payments. I can, however, see that she had a legitimate looking sales brochure and had exchanged emails with the people involved in arranging her investment. I agree with our investigator that even if Nationwide had asked relevant and probing questions, it wouldn't have been enough to make Miss C decide that this wasn't a genuine investment, or to raise concerns. The companies she was dealing with were well established, and the scheme on the face of it was a credible investment. In other words, I agree with our investigator that even if Nationwide had intervened at the time of the payments, this wouldn't have made a difference. I want to expand on this.

I can see that Miss C was to receive a guaranteed rental income in exchange for her investment and the room would be bought back at the end of the five-year period with a guaranteed return – and that the returns in question weren't too good to be true. And that Miss C received the rental income she'd been promised until January 2020 – albeit not always on time. Although I accept that Miss C has spoken to other investors who say they stopped receiving their rental income earlier than that – I don't think it's unreasonable to conclude that this was an investment that hasn't performed as expected, not least given the impact Covid had on the hotel sector, rather than an investment scam. I think it's worth

saying a bit more about what Miss C did and discovered between September 2020 and 2023 – including what the authorities ultimately said – here.

I can see that Miss C got in contact with other people who had invested in the same scheme and that they ultimately formed a group who – with the help of a solicitor – took preliminary steps to recover the money they'd invested. Those steps included getting a Court Order to help establish what had happened to their money. Getting that Court Order involved the group showing an arguable case that wrongdoing had occurred, or as the solicitor put it "reasonable grounds on which to suspect that the investment scheme was a scam". I'm satisfied that this was something that the group was only able to show after speaking to one another and having spent extensive amounts of time pulling together and examining evidence. And that this took a couple of years too. In my opinion, the lengths the group had to go to shows that it's not at all easy in this case to say whether or not this is an investment that has gone wrong or a scam. Of equal importance is that I can see the authorities concluded that there is no realistic chance of conviction in this case saying that:

*"the overwhelming challenge is that we cannot prove beyond reasonable doubt that this was setup with the intention to commit fraud from the outset. The unprecedented Covid 19 pandemic and national lockdown lead to the closure of the hospitality industry and presents an exceptional excuse for the business becoming insolvent. In the main victims were receiving income inline with their expected returns until the pandemic struck."*

So, I don't think it was unreasonable of Nationwide to say that it wouldn't have been able to uncover that this was a scam at the time. Nationwide has told us that it remains of the view that this was an investment that went wrong, and that it's reference to this being a scam when it investigated in March 2023 was an error on its part. I accept that this was the case.

In short, given:

- a) Miss C was happy this was a genuine investment for at least two years;
- b) the documentation that was available at the time; and
- c) the amount of effort that has been needed to show that this might be a scam,

I don't think it would be fair to say that Nationwide missed an opportunity to prevent loss to Miss C when she made the payments or when she originally complained. I should add that I accept that Nationwide checked whether or not any of Miss C's funds remained when she originally complained and that none did. That's consistent with information Miss C – and the group of investors – obtained with the solicitor's help. So, I don't think it would have made a difference had Nationwide done more in September 2020 either. And I agree with our investigator that it wouldn't be right to uphold this complaint.

I appreciate that this will be hugely disappointing for Miss C – she's lost a lot of money. But I hope I have explained why, in this case, it wouldn't be fair to ask Nationwide to do more.

### **My final decision**

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 8 February 2024.

Nicolas Atkinson  
**Ombudsman**