DRN-4639215

The complaint

Mrs P has complained Nationwide Building Society won't refund money she lost as the result of an investment.

What happened

After being approached in 2018, Mrs P decided to invest £10,000 in a company (who I'll call D) offering generous rates of return. She instructed Nationwide to make two payments overseas of £5,000 each.

Subsequently D fell into bankruptcy and Mrs P believes Nationwide should have intervened in the payments she was making and alerted her to potential risks.

Nationwide didn't believe there was a case to answer. They weren't convinced Mrs P was the victim of a scam rather she'd made an investment which had turned bad.

Mrs P referred her complaint to the ombudsman service.

Our investigator felt the evidence wasn't clear that Mrs P was the victim of an investment scam. He wouldn't be asking Nationwide to take any further action.

Mrs P disagreed with this outcome. Her representatives submitted further documentation in support of her complaint and asked it to be referred to an ombudsman.

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 reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I don't dispute Mrs P strongly believes she was scammed. She didn't consider herself an experienced investor and has now lost £10,000. She has my sympathy about what she has gone through.

However I'm not convinced that the evidence indicates Mrs P was the victim of an investment scam. Rather I think she invested money overseas on the promise of excellent, and perhaps unrealistic, returns. Whilst D was not regulated by the FCA at the time, they were also not subject to any advisories or warnings. This changed in October 2020 after the FCA confirmed D had entered administration.

There's no dispute that Mrs P made and authorised both of the payments. This was after a transfer of funds from a savings account or bond of nearly £12,500.

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

It's generally accepted that Nationwide has an obligation to follow Mrs P's instructions. So in the first instance Mrs P is presumed liable for her 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.

At no stage did Nationwide intervene or ask Mrs P what she was doing. However I don't think I'd consider this an issue or feel they should have done more to note the payments Mrs P was making to D. And even if they'd done so, I don't believe they would have felt any reason to alert Mrs P she was the victim of a scam as I don't believe she necessarily was.

I say this because:

- Nationwide should have been alert to any unusual payments Mrs P was making but these two payments overseas were relatively low value. I'm aware she'd not made any other payments of this value over the preceding six months, but these two transfers came after a payment into Mrs P's Nationwide account of nearly £12,500. This looks to me like income following the maturity of a savings bond or a withdrawal from a savings account.
- If this were a scam, we'd more likely see Mrs P be persuaded to use all the proceeds to invest in D. But although she had more money at her disposal, she chose to make just the two payments of £5,000 each.
- There were only two payments. I think it's unlikely from those two payments alone Nationwide would have detected any potential risk to Mrs P.
- Even if they had discussed what Mrs P was doing, she would have explained the investments she was making and perhaps even the terms. There was no existing alert about D. Whilst Nationwide's staff may be trained to intervene in potential cases of fraud, there was no requirement on them in 2018 to advise individuals to ensure they get proper financial advice whilst investing.
- It was always open to Mrs P – knowing that she was an inexperienced investor – to obtain financial advice herself if she felt that was appropriate. She may well have felt because of the low-level nature of her investment this wouldn't have been merited based on the cost of financial advice.

I’ve noted the detailed documentation Mrs P’s representatives have shared with our service which I have considered. I note what they say about clear evidence showing D was operating a Ponzi scheme. They also confirm scams existing from the losses suffered by individuals after investing in D. However this documentation hasn’t caused me to come to a different outcome.

Overall I’m not convinced I’d have expected Nationwide to intervene.

My final decision

For the reasons given, my final decision is not to uphold Mrs P’s complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs P to accept or reject my decision before 17 April 2024.

Sandra Quinn
Ombudsman