

The complaint

Mr B complains that Nationwide Building Society (“Nationwide”) won’t refund the money he lost when he sent payments to an investment via a third party. He believes the third party to have been fraudulent.

The complaint has been brought via a representative. For ease, I’ll mainly refer to Mr B, even where comments or submissions have been made on his behalf by the representative.

What happened

Mr B had previously invested with “D” via an individual who I’ll refer to as Mr P. Mr B received correspondence from D as well as the promised returns for the period of the investment. From what Mr B has said, it appears he also invested in this way for a second time, without any issues.

Mr B was offered a further opportunity to invest with D. But this time, he was asked to make payment through a company I’ll call “W” under instruction from Mr P. So, he made nine payments of £10,000 from his Nationwide account on 25 May 2018, having released these funds from his home.

Mr B said that around a week later, he told Mr P he hadn’t received confirmation of his investment with D. From then he was informed the money had been put into a system so he wouldn’t pay tax. Seemingly, Mr P started receiving £750 per month within a couple of weeks of making his payment.

Mr B said he discovered, in around June/July 2023, that his money had been paid into W and sent via them to D, in W’s name rather than his own. And he said he’d received paperwork from Mr P which he’d signed without fully reading due to “*our so called trust*”.

D later failed and this has ultimately led to the loss of Mr B’s funds. Mr B believes Nationwide should have done more to protect him from the loss of his funds.

Nationwide agreed it should have intervened due to the out of character payments made by Mr B. But it didn’t think this intervention would have prevented the loss. It said the payments were made to a legitimate firm, though it’s unclear if it’s referring to D or W, and there was no information that the investment wouldn’t pay out in the time period promised, or that the firm would fail. It said this was a high-risk investment but that this doesn’t mean it was a scam. So, it wouldn’t have prevented the payments from being processed. And therefore it didn’t uphold Mr B’s complaint.

Mr B brought the complaint to our Service. Our investigator didn’t think there was any compelling evidence that W was operating a scam. She noted Mr B had an established association with Mr P, that they’d engaged on a personal level for investment purposes, and that Mr B had benefited from investing via Mr P previously. She also noted that Mr B received monthly returns soon after ‘investing’ which isn’t characteristic of a scam.

So, she concluded that there wasn’t enough evidence to say that Mr B had been scammed

by W. But, even if W had been operating a scam, she didn't think Nationwide could reasonably have prevented Mr B's losses if it had intervened, due to the history between Mr B and Mr P.

Mr B disagreed. He pointed out that he had been, in effect, bribed by W. It sent him payments, said to have been £750 per month, to avoid him raising the issue. He also made reference to the tax situation – with the suggestion that the way the money was handled was tax evasion – and said this would have put Nationwide on notice of the issue with the investment. Furthermore, he believes that re-mortgaging his house to fund the investment should have been a concern. And he notes that checks on W would have identified it as a new, unregulated company that didn't appear to be an introducer, as Mr B believed was the case. So, in summary, Mr B feels that an intervention would have prevented him from proceeding with the payments.

So, the complaint has been passed to me to decide.

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 won't be upholding this complaint – I'll explain why.

While I've considered Mr B's points fully, I'll only address what I consider to be the key points.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

The Contingent Reimbursement Model ("CRM") code, which would usually be a consideration in cases such as this one, came into effect after these payments were made, so isn't relevant here.

It's not been determined that W – the recipient of the funds – was actually operating a scam. As our investigator did, I've explored the official organisations that publish warnings about merchants that operate in the UK and abroad. But, while I've seen matters such as the nature of the business on Companies House being unrelated to investments, I've not found anything compelling that would suggest it was a *scam*.

I would also note that, within a couple of weeks of making the purported investment, W started to send Mr B £750 per month. Evidence provided suggests these payments continued for four years. It would be very unusual for a scam company to make payments of this amount and this frequency, which would total over £35,000 over that period. Mr B has made further comments around this which I'll touch on later.

Regardless of whether W was or wasn't operating a scam, I've thought carefully about what would have been expected of Nationwide at the time with the facts before me.

In broad terms, the starting position is that Nationwide would have been expected to process payments that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. It's not been disputed that Mr B authorised the payments so, in the first instance, he's presumed liable for the payment.

Given the amount involved here, £90,000 across multiple payments in one day, I would have expected Nationwide to have had grounds to suspect the payment might have been connected to fraud or a scam. And I therefore think it should have intervened before processing the payment. It didn't. But that doesn't mean the complaint should be upheld. It means I need to consider what would likely have happened if it had intervened appropriately and proportionately.

Had it intervened, I'm persuaded that Mr B would have continued with the payments. I say this because it's clear there was an existing relationship between Mr B and Mr P. Mr P had been involved in arranging the earlier investments with D, which Mr B was satisfied with, *"Having had a good return from [D] I thought [I'd] be in good hands"*.

But, beyond this, there seems to have been an ongoing relationship which was on a more personal level. An email from Mr P to Mr B sent sometime after the payments in dispute says *"On a personal note, I appreciate the loan you made a few years ago, which at the time made a huge difference to me and the family. This will never be forgotten and I will always be grateful but if you recall those funds were paid back before any talk of money from your house being invested..."* and, in April 2019, *"I wish you the very best in everything you do on a personal manner but do not feel it is appropriate to spend time together outside of the professional situation"*.

From the evidence provided, the relationship doesn't appear to be as simple as that of a broker and an investor – it's clear that there was a personal relationship here and a level of trust. And Mr P's involvement with Mr B previously had resulted in financial gain. Though the quotes above point to the souring of the relationship, this wasn't the case at the time of the investment.

Nationwide wasn't required to determine the suitability of the third-party investment product. Nor was it required to conduct any research on W, or D for that matter. I have to think about what it could reasonably have established in the course of proportionate enquiries to Mr B – and without the benefit of hindsight. Had it been suggested that Mr B conduct some further research himself, I think it's likely he would have been confident that Mr P had it all in hand. Or, at most, that he would have referred back to Mr P, whom he trusted. This is supported by Mr B's testimony in which he admits he didn't read fully the paperwork he received and signed, due to the existing trust. So, had Nationwide asked proportionate questions, I'm persuaded that Mr B would have conveyed his confidence in the investment, safe in the knowledge he had an existing relationship with Mr P and had successful past investments, that had been arranged through Mr P.

For completeness, I'll also just reference D as, though it wasn't ultimately involved the investment as far as Nationwide was aware, Mr B would likely have referenced it if questioned. And there's insufficient information to determine that this was a scam, as opposed to a higher risk investment. I don't think Nationwide could have uncovered information that would have led to significant doubts about D's legitimacy at that time. And Mr B had had good experiences with it previously. It folded in 2020, some time after these payments were made.

I did just want to touch on a few further points raised by Mr B. He mentioned that his payments were made across multiple smaller payments and that this had been done as a means to avoid tax – which he thinks would have cast doubt about the legitimacy of the investment. But Mr B wasn't aware of the supposed tax implications at the time of making the payments; it came to light later on. And, had Nationwide probed into the number of payments being made, I refer back to my earlier point that Mr B would likely have expressed his confidence in the situation. So, Nationwide wouldn't have found out about this had it suitably probed.

Mr B has also told us that he only found out in around June 2023 that the money was paid to W, rather than to D directly. But again, had there been any discussion around this, I'm persuaded that Mr B would have referred back to Mr P who likely would have allayed any concerns.

Finally, Mr B has mentioned the monthly payments of £750 which he believes to have been a form of bribery. He said that, had D not folded, he would never have become aware of the situation with his payments having gone to W. Had this been a scam, I can't see what benefit it would have been to pay out this sum for such an extended period of time. But, going back to what Nationwide could reasonably have known at the time, I note that it was several years before Mr B uncovered what had gone on in full. Based on what was known at the time by Mr B, I don't think that Nationwide could reasonably have uncovered the situation.

In summary, I can't see how any reasonable intervention from Nationwide would have made a difference to Mr B's decision to invest. And I therefore don't think it would be reasonable to hold it liable for his losses.

Having considered everything, while I'm sorry that Mr B has lost a substantial sum of money, I don't uphold this complaint.

My final decision

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 January 2025.

Melanie Roberts
Ombudsman