

The complaint

Mrs K complains that Nationwide Building Society did not refund a series of payments she says she lost to a scam.

What happened

Mrs K says she received unsolicited contact about an investment opportunity with a company I'll call 'M' for the purposes of this decision. M was offering loan notes for property investments which would receive returns of 18% over 18 months. After receiving documentation including the terms and conditions, Mrs K signed a loan agreement and made the following transfers from her Nationwide account to M:

- 16 May 2019: £10,000
- 16 May 2019: £5,000
- 16 May 2019: £5,000.22

Mrs K did receive updates about her investment, and in 2020 she was told the building projects had been affected by the COVID-19 pandemic. Mrs K received communications from the insolvency service about a subsidiary of M she had been dealing with, explaining a winding up order had been made against them by the High Court of Justice in August 2021, and they were going into liquidation as a result. Unfortunately, there were not enough assets remaining to repay creditors, including Mrs K.

Mrs K raised a scam claim with Nationwide in August 2023, and they issued a final response letter saying they felt it was more likely this was a civil dispute, and not a scam. This is because they felt it was more likely M was a genuine investment company at the time of the transactions.

The complaint was referred to our service and our Investigator looked into it. They explained that they had not seen sufficient evidence to conclude this was a scam, but even if they were satisfied it was a scam, they did not think any intervention by Nationwide would have made a difference to the payments being processed. This is because at the time of the payments, M was active on Companies House, there were no online warnings or negative reviews about them, Mrs K had received official looking documents which showed the investment literature had been approved by a firm authorised and regulated by the Financial Conduct Authority ("FCA"). So, they did not think Nationwide would have had concerns about the payments at the time.

Mrs K's representatives disagreed with the outcome. In summary, they felt the payments were unusual and should have triggered on the bank's fraud systems. And had they have done, Nationwide would have seen the investment was not regulated by the FCA, that the returns promised were high and that Mrs K was not a sophisticated investor.

As an informal agreement could not be reached, the complaint has been passed 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.

Having done so, I've come to the same outcome as the Investigator for largely the same reasons. I do not think Nationwide needs to reimburse Mrs K in the circumstances. I'll explain why in more detail.

Mrs K's representatives have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service and as our rules allow, I will focus here on the points I find to be material to the outcome of Mrs K's complaint. This is not meant to be a discourtesy to Mrs K, and I want to assure her that I have considered everything she has submitted carefully.

Mrs K has said she has been the victim of an investment scam. It should be noted that the transactions in question are not covered by the Contingent Reimbursement Model ("CRM") Code, which came into force on 28 May 2019. I appreciate her representative's comments that Mrs K made the payments just a few weeks before this, so Nationwide should have already been acting in the spirit of the Code. However, the CRM Code is not retrospective, so Nationwide is not required to assess the case in line with it. But this does not mean they did not have to take steps to protect Mr K's account from financial harm.

Based on the evidence I have seen, there is not enough for me to safely conclude whether a scam occurred in the circumstances. I am aware that there were issues with M from around December 2019, which led to them becoming insolvent and being wound up. However, this was seven months after Mrs K chose to invest in them. But in May 2019, there was no clear indication that M was not a legitimate company that was providing loan notes for investment opportunities. To be fair to Mrs K, I have gone on to assess this complaint as if I was satisfied a scam occurred, for completeness.

The payments themselves did occur in a relatively short space of time, which could be seen as unusual. I can see Mrs K had made similar payments in a similar pattern to a separate company, but she has also raised a scam complaint about these payments. So, I have not included these other payments in my assessment. With this in mind, it can be argued that Nationwide should have flagged the initial payment of £10,000 for further checks. And I think this would have included a conversation about the payments.

I've therefore considered whether a conversation about the payments would have led to Nationwide having concerns over them and on balance, I don't think it would have done. At the time of the payments, the subsidiary of M that the investment was going to had been active on Companies House for almost a year, and there were no negative reviews or articles online about them. They had provided Mrs K with professional looking documentation about the loan note, including terms and conditions and an agreement. This set out it was a high-risk investment, and asked Mrs K to self-certify that she was a sophisticated investor, which she did.

While M was not regulated by the FCA, the literature provided indicates a separate company I'll call 'E' who was regulated by the FCA approved the investment literature. And I think this would have provided some reassurance for the legitimacy of the loan note.

On balance, while I do take on board the issues Mrs K's representatives have raised about the promised returns and the introducers not being registered with the FCA, I don't think these issues, when considered alongside the points raised above, are enough to me to agree Nationwide therefore should have stopped the payments from being processed at the

time.

I therefore do not think Nationwide needs to take any further action to remedy this complaint. I also note there was nothing further they could have done to try and recover the funds once Mrs K raised a complaint. This is because M had already entered liquidation at that time, so no funds were available to be recalled.

My final decision

I do not uphold Mrs K's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 26 November 2024.

Rebecca Norris
Ombudsman