

The complaint

Mrs J and Mr J complain that Nationwide Building Society (NWide) won't refund money they lost in an investment.

What happened

What Mrs J and Mr J say:

In December 2019, Mrs J and Mr J got a call from someone who said they worked for an investment broking firm and told them about an ISA investment. They were told the investment was regulated by the Financial Conduct Authority (FCA) and this assured them the investment was genuine and safe.

They agreed to deposit money into a bond, which was for three years and paid 8.1% per annum. The investment was to be with firm 'A'. A payment of £10,000 was made to an account nominated by the broker.

The payment was:

Date	Payment	Amount
18 December 2019	Online banking	£10,000
Total		£10,000

They received paperwork confirming the investment had been made. They received four amounts of interest:

8 January 2020: £389.05
 15 July 2020: £386.60
 8 January 2021: £374.55
 30 July 2021: £373.55

Administrators were appointed to firm A on 1 August 2022. The most recent administrator's progress report was dated 29 February 2024.

Mrs J and Mr J complained to NWide through a third-party claims firm in January 2024. They said NWide should've done more to protect them. They said this was a 'Ponzi' scheme where there was no intention of the investment actually being made and they'd been victims of a scam.

They said NWide should've intervened and stopped the payment. So, NWide should refund the money they'd lost.

What NWide said:

NWide said (in February 2024):

- There were no warnings applied to the payee at the time of the investment.
- Firm A was regulated by the FCA at the time of the payment.
- Firm A was registered with Companies House in February 2017 and went into Administration in August 2022.
- The brokers involved were also regulated by the FCA. The investment was made on an 'execution only' basis – meaning no advice was given by the broker.
- Payment of interest on four occasions was in keeping with the investment made.
- This was a case of a failed investment. There wasn't any evidence to suggest it was a 'Ponzi' scheme.
- NWide didn't need to intervene but if they had, they would've found out the payment was being made to a trading firm regulated by the FCA and using a broker also regulated by the FCA. NWide wouldn't have been in a position to advise on the suitability of the investment.

Our investigation so far:

Our investigator didn't uphold the complaint. She said:

- This is a civil case and not a scam.
- So, the Contingent Reimbursement Model ('the Code') didn't apply: as the Code covers scams, and not civil cases.
- Mrs J and Mr J received documentation from firm A, so suggesting there was an intention to make the investment rather than defraud them.
- Even if NWide had intervened, it was unlikely that the payment would've been stopped. There was no basis for NWide to have flagged any potential issues with the investment to Mrs J and Mr J.

Mrs J and Mr J didn't agree and asked that an ombudsman look at their complaint, and so it has come to me to make 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.

As a first step, I need to decide whether this was a scam (where a scammer takes money from a customer with no intention of providing any services or returning the money to them) or a civil dispute (where a payment is made to a legitimate trading company or business, but the promised services or products don't materialise, or are sub-standard).

If this was a scam – then banks (including NWide) must follow industry and regulatory guidance to check certain payments and in some circumstances, protect customers by stopping the payments and contacting customers about them. And where banks haven't followed the guidance, they can be asked to refund them. This is called 'Authorised Push Payments guidance (APP)'.

To give an idea, typical scams are commonly perpetrated by criminals through illegal call centres - for example, scams relating to online banking, or tricking customers into transferring funds to a 'safe account', and romance or investment scams using social media.

But where payments are made to a valid business for work to be done, or investments made then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability.

I therefore looked at Mrs J and Mr J's complaint with this in mind. I am persuaded this is a civil dispute between these customers and firm A. I say that as:

- Firm A was incorporated in February 2017. It filed accounts at Companies House up to 29 February 2020.
- Administrators were appointed on 1 August 2022.
- The broking firm involved were regulated by the FCA (and still are).
- I can see that paperwork set out the terms of the investment, and the prospective returns.
- Four interest payments were received by Mrs J and Mr J. This wouldn't normally be the case if a scam had taken place.
- I could see no online warnings about Firm A at the time of the payment. Usually this would be the case if there was a scam taking place.
- Therefore, even if NWide had intervened and questioned the payment, there was no reason for the bank to suggest that the investment shouldn't be made: the firms involved were regulated by the FCA, and there were no warnings about them.
- And it wasn't NWide's role to provide any sort of investment advice in any case.

I'm sorry that Mrs J and Mr J have lost money. But, I consider this was an investment that unfortunately went wrong. And in those circumstances, NWide don't have a duty here to protect Mrs J and Mr J - and I am not asking the bank to do anything.

I looked at the latest report of the administrators dated February 2024 (available on the Companies House website). I assume Mrs J and Mr J are unsecured creditors, and the report says there is unlikely to be a dividend payable to unsecured creditors. But if they haven't done so already, I suggest they must ensure they have a claim lodged with the administrators regarding the money they are owed.

(continued)

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 25 July 2024.

**Martin Lord
Ombudsman**