

The complaint

Mrs D complains that Nationwide Building Society (NWide) won't refund money she lost in an investment scam.

What happened

What Mrs D says:

In 2018, Mrs D received a call from a company regarding an investment opportunity. She was introduced to the prospect of investing in a property company (which I will call 'company A'). She was told the investment would pay a return of 12-15% per annum.

She made two payments:

Date	Payment	Amount
22 November 2018	Online payment	£10,000
22 November 2018	Online payment	£10,000
Total		£20,000

She received no return on her investment and she lost her money.

Mrs D says (through a third-party claims firm):

- The payments were out of character and NWide should've intervened and stopped them. She recalls she got a call but NWide only asked whether it was Mrs D who was making the payments and no more.
- Company A was a ponzi-type scheme and investors were duped into investing money with them.
- The promise of high returns was ludicrous – especially as it was known company A were paying introduction commission of 20-25%.
- There was a lot of publicity around at the time of ponzi schemes/fake investments, which NWide should've been aware of.
- Had NWide intervened, it would've been clear that the investment was unsuitable for Mrs D. She was unemployed at the time.
- She was vulnerable at the time as she was caring for her elderly mother, who sadly passed away in 2021.

She says NWide should've done more to protect her. She has now lost all her money –

which she says NWide should refund, plus interest at 8% per annum.

What NWide said:

NWide said the payments made by Mrs D were to a genuine company. It was an investment that went wrong – it wasn't a scam. So, any contact between NWide and Mrs D wouldn't have highlighted any concerns of fraud.

NWide said company A went into liquidation and therefore Mrs D would need to contact the liquidators to file her claim.

NWide didn't refund any money.

Our investigation so far:

Our investigator didn't uphold the complaint. He said there was evidence that company A was a genuine trading company - which went into liquidation in December 2021.

He hadn't seen anything to suggest company A didn't intend to act in line with the agreement or to pay the returns promised. Company A had completed three development projects in three major cities. It had other projects it was working on but these were sold to other developers when company A ran into difficulty.

So, there was no evidence that Mrs D's funds weren't used for their intended purpose. And so, he said this was a civil matter and not a scam.

Mrs D didn't agree and asked that an ombudsman look at her complaint.

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.

It's not in question that Mrs D authorised and consented to the payments in this case. So, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider NWide should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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 (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some

cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether NWide acted fairly and reasonably in its dealings with Mrs D when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances. But – it doesn't apply in this case as it came into effect on 28 May 2019 – some time after Mrs D made the payments to company A.

If the payments were of a sufficient size and were out of character with how Mrs D normally used her account – then we would expect NWide to have intervened and spoken to her about them. I looked at Mrs D's account, and it's fair to say that the payments were unusual compared to the way in which she used her account – which was to make day to day expenditure of low value: under £100. And – there was a large credit to the account for £20,000 the day before the payments were made, which could be taken as a sign of a fraudulent payment was about to be made.

So, it appears reasonable that NWide should've intervened and spoken to Mrs D. With the passage of time, NWide can't show evidence of what was said or discussed on the call. Mrs D says she recalls that the bank did call her – but only to confirm it was her making the payment. So, given the lack of contrary evidence, it looks like there wasn't a significant intervention by NWide at the time.

But I must reach a decision based in what NWide could've done at the time.

If NWide had carried out the checks I would've expected it to have done, I don't think they would've uncovered significant concerns and I don't think the payments Mrs D was trying to make to the investment company would have been stopped.

In these circumstances and given the size of the payments Mrs D was making, I think it would be reasonable to expect NWide's checks to include questions about the purpose of the payment and then relevant follow-up questions about the investment Mrs D thought she was making and what checks she had done to satisfy herself it was genuine.

Mrs D thought she was investing in a bond which would pay her interest each year. And as this is a fairly standard form of investment, I don't think this would have seemed particularly suspicious to NWide or that the returns Mrs D was told she would be paid would have seemed too good to be true.

At the time, company A had been listed at Companies House and filed accounts for several years. And I wouldn't necessarily expect this of a company intending to operate a scam, so I think this would have reassured both Mrs D and NWide that the investment company was genuine. I noted that an administrator was appointed in February 2022, and the company is now subject to a winding up order – in August 2024. These events are a long time after the payments were made by Mrs D.

I haven't seen evidence of any promotional literature company A issued in relation to the bonds, but I assume this was fairly standard paperwork. So, if NWide had asked to see any of this paperwork associated with the investment, I don't think this would have raised any concerns either.

And so if NWide had carried out the checks I would've expected when Mrs D made the payments, I think it would have been satisfied with the information it was given.

I think this would have looked like a genuine investment to NWide. And so I wouldn't have

expected it to stop Mrs D making the payments.

Mrs D has said to us there were irregularities with how the company A was conducting its business around the time of her payments. But this information has only come to light since the payments she made and wouldn't have been available to either her or NWide at the time.

So I don't think this subsequent information means NWide acted unreasonably in allowing the payments to go through.

I appreciate that Mrs D has lost a significant amount of money and I sympathise with the position she has found herself in. I'm also not saying she did anything wrong herself or that she doesn't have a legitimate grievance against company A. But I can only look at NWide's responsibilities and, for the reasons I've set out above, I don't think the firm acted unreasonably in allowing the payments Mrs D made to go through or that anything I would reasonably have expected it to have done would have prevented the loss she suffered.

I therefore don't think it would be fair to require NWide to refund the payments Mrs D made.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 4 December 2024.

Martin Lord
Ombudsman