

## The complaint

Mr P has complained that Nationwide Building Society (“Nationwide”) failed to protect him from an investment-related scam.

## What happened

I issued my provisional decision dated August 2023 in which I explained I thought Nationwide should refund some, but not all, of Mr P’s losses. I won’t rewrite my provisional decision here, but I’ve included an extract of it below.

### ***What happened***

*The background of this complaint is already known to both parties, so I won’t repeat all of it here. But I’ll summarise the key points and then focus on explaining the reason for my decision.*

*Mr P has used a professional representative to refer his complaint to this service. For the purposes of my decision, I’ll refer directly to Mr P, but I’d like to reassure Mr P and his representative that I’ve considered everything both parties have said.*

*Mr P has complained that between May 2020 and February 2022 he sent over £53,000 to an individual (who I’ll refer to as G) that he believed was offering him an investment opportunity.*

*Mr P explains that he’d known G for several years and he’d previously helped him recover a pension of around £60,000 when the provider collapsed. Following this, Mr P says that he believed G was helping when he offered to invest his pension into a fund which would pay Mr P between 5% and 8% income per month, whilst maintaining his initial capital. Mr P received payments from G for around seven months.*

*Mr P says that he was never given proof that the money he sent to G was ever invested in the way he expected. He also says that despite the returns he did receive, this shouldn’t undermine the fact that he was deceived into investing in what he now describes as a collapsed Ponzi scheme.*

*The payments Mr P sent to G were as follows:*

<b>Date</b>	<b>Amount</b>
15/05/2020	£50,000.00
17/11/2021	£1,000.00
10/01/2022	£500.00
28/01/2022	£250.00
02/02/2022	£100.00
09/02/2022	£200.00
23/02/2022	£1,300.00
<b>Total</b>	<b>£53,350.00</b>

*Between July 2020 and January 2021 Mr P received monthly payments into his account from G. The credits varied between £1,500 and £4,000 and totalled £27,500. Taking into account the payments he made minus what he received in return, it appears Mr P has lost £25,850.*

*Mr P says he realised he'd been scammed when the monthly payments stopped, in January 2021. When Mr P contacted G about this he says he was told numerous excuses as to why the payments had stopped.*

*After Mr P initially reported the fraud to Nationwide it wrote to him declining to refund what he'd lost. Nationwide said it hadn't seen evidence that the money had in fact been lost through fraud.*

*Mr P was unhappy with this so he made a complaint. In the complaint he said it would've been obvious to Nationwide that he was falling victim to a scam, which Nationwide should've detected and warned him about.*

*Nationwide didn't uphold Mr P's complaint because it said that this was in fact a civil matter. It said that Mr P had known G for several years, and he'd previously helped Mr P with a financial matter. It also said that Mr P had received monthly returns on the investment which isn't indicative of a scam. It concluded that it was more likely the investment had failed rather than Mr P having been the victim of a scam.*

*Mr P remained unhappy so he referred the complaint to this service.*

*Our investigator considered everything and didn't think the complaint should be upheld. She explained she wasn't satisfied that Mr P had been the victim of a scam, rather than a failed investment. But Mr P didn't accept the investigator's opinion, so the case has been passed to me to make a decision.*

### **What I've provisionally 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.*

*I'm currently intending to reach a different outcome to our investigator, as I'm not persuaded that Nationwide did enough to protect Mr P. I'll explain why.*

*In broad terms, the starting position is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And in this case it's not in question whether Mr P authorised these payments from leaving his account. It's accepted by all parties that Mr P gave the instructions to Nationwide and Nationwide made the payments in line with those instructions, and in line with the terms and conditions of Mr P's account.*

*But that doesn't always mean that the business should follow every instruction without asking further questions or intervening to ensure requests coming from their customers are firstly genuine, and secondly won't result in harm.*

*Nationwide's initial investigation notes show that it doesn't appear to have shown any warnings or intervened in any of the payments Mr P made. And it also says it doesn't have any details on whether it confirmed whether the recipient of the payments was who Mr P intended it to be. Nationwide's notes also state "No alerts. Payment made by CHAPS would have been considered a high value payment which should have prompted additional questioning around payment to understand purpose and rule out potential scams." In addition, I can see a message on Mr P's February 2022 bank statement in relation to some upcoming changes being introduced for when payments are made. The message says that Nationwide*

would soon be introducing “some guidance to help you decide whether to make that payment before it goes through”.

Despite the evidence to suggest that Nationwide didn't warn Mr P before he made the payments, in Nationwide's response to this service, after Mr P referred his complaint here, Nationwide said that it gave Mr P warnings before every payment. It says it gave him a warning related to investments when he sent the payment for £50,000 which included the following message:

“Does the opportunity seem too good to be true?  
Were you contacted unexpectedly, or are you feeling pressured to invest?  
Have account details been provided by e-mail?  
If yes to any of the above, its likely to be a scam and you should stop now.”

Nationwide also says that this warning would've given Mr P advice to check the Financial Conduct Authority's Warning List, and to search online for reviews about the investment he was making. Although the warnings were referred to in an email, I haven't seen evidence that these warnings were shown or how they were presented.

I note Nationwide says there's no adverse information available in the public domain about G, so even if it had intervened in the payments Mr P made it's unlikely it would've had cause for concern. But I don't agree with Nationwide's point here. I've noted a Final Notice issued by the regulator in 2005, for a party with the same name as G, located in the area Mr P lives. The notice shows that G was refused authorisation to give financial advice on the grounds of previous complaints against him, previous performance issues, and county court judgements being issued against him.

With the above in mind, I can't be certain that Mr P did receive a warning from Nationwide when sending any of the payments. But even if he did, I'm not satisfied that its generic nature about investments was a proportionate intervention in relation to the first payment. The payment size of £50,000 was significantly out of character for Mr P's account, and it was being sent to a new payee. Had Nationwide intervened further to ask relevant questions about the investment Mr P was allegedly making, it's likely it would've realised that Mr P was in fact sending funds to an individual who wasn't authorised to provide investment advice and potentially falling victim to a scam. It's also likely it would've uncovered the adverse information I've highlighted about G and been able to provide Mr P with a warning about that.

I also note that Nationwide says this wasn't a scam, but instead a civil dispute as it's more likely that Mr P lost out because the investment failed. But I haven't seen evidence to support Nationwide's point here. And making this point with hindsight doesn't negate Nationwide's responsibility at the time of the payment to protect its customers from financial harm, which as I've already pointed out, is mentioned in Nationwide's own investigation.

When Mr P made the other payments, from the second to the seventh, he told Nationwide he was paying “Friends or a relative”. Nationwide says he was then shown a warning urging him to check that he was definitely paying who he thought he was, preferably pay by card, or to stop if he'd been told that his money was at risk. For the size of these payments, and the frequency and pattern of them, I think the written warning was sufficient. There wasn't a pattern typical of a scam and the payments were fairly spaced out, and for relatively small amounts. With these points in mind and given that Mr P told Nationwide they were payments to friends or a relative, I don't think Nationwide ought to have done more to intervene in them.

Is Mr P responsible for any of his losses?

*I've kept in mind that the responsibility for the loss here doesn't necessarily lie solely with Nationwide. Mr P was also responsible for carrying out his own checks to satisfy himself, as far as possible, that the payment he was making wouldn't lead him to financial harm.*

*I take on board Mr P's points that he'd known G for some time, and he'd helped Mr P recover his pension funds, so I can understand to an extent why Mr P trusted him.*

*But I also need to keep in mind that it doesn't appear that Mr P was given much information – such as literature or correspondence – in relation to the investment he was supposedly making. Mr P could have done his own research as far as possible, and had he done so, I believe he may've also uncovered the adverse information about G that I've described above. This, plus the fact that the arrangements seem to have been completed by phone and email alone, should've raised some red flags for Mr P.*

*I currently think that Nationwide should've intervened further before Mr P made the first payment, but I also think it's fair that Mr P takes some of the responsibility for the loss he experienced. So I'm currently minded to say that responsibility for Mr P's losses should be shared equally between the parties.*

*As I think the warnings Nationwide gave from the second payment onwards were sufficient, I'm not proposing to tell it to refund any of them to Mr P.*

#### Recovery of the funds

*Nationwide says it liaised with the receiving bank and it recovered £3,100 of the funds Mr P had sent. Whilst it wasn't able to recover more as the rest of the funds had been removed from the account, I'm satisfied that Nationwide did what it could to recover as much as possible.*

*I'm very sorry that Mr P has lost the money he has and I do understand that my decision will be disappointing. But for the reasons I've set out above, I don't hold Nationwide responsible for that.*

Mr P responded to my provisional decision. He didn't agree that only the £50,000 should be taken into consideration as part of the refund. He said that had Nationwide prevented the fraud at the time the first payment was made, the following payments also wouldn't have been made, so he wouldn't have incurred any of the losses he experienced.

Nationwide accepted my provisional decision and didn't provide any further comments.

#### **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.

I've thought carefully about the additional point Mr P made and having done so, I agree with him.

In order not to delay the process I contacted Nationwide to explain my thoughts, instead of issuing a second provisional decision.

Nationwide agreed to include all payments Mr P made as part of the scam, and not just the first payment for £50,000. I'd like to thank Nationwide for its co-operation in resolving the matter promptly.

I think this is a fair resolution to the complaint.

### **Putting things right**

Nationwide should put things right in the following way:

- Pay Mr P 50% of the remaining loss of all of the payments he made. This can take into account the £27,500 returns and £3,100 recovered funds Mr P has already received and;
- Pay 8% simple interest\* on these amounts, from the date each payment left Mr P's account until the date of settlement.
- Nationwide should provide Mr P with a breakdown of how it's calculated the payment if Mr P asks for one.

\* HM Revenue & Customs requires Nationwide to take off tax from this interest. Nationwide must give Mr P a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

I uphold Mr P's complaint and require Nationwide Building Society to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 October 2024.

Sam Wade  
**Ombudsman**