

## The complaint

Mr B complains that Nationwide Building Society didn't protect him from an investment scam.

Mr B is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr B in this decision.

## What happened

Mr B has said that a friend from his social club (Mr C) introduced him to an investment with a company (which I'll refer to here as 'H') in relation to Forex trading. Mr B said that Mr C was already investing in 'H' (£80,000) and had received returns. And that Mr C provided him with literature on 'H' and told him how he'd visited their offices and witnessed employees administering the investment.

Mr B then obtained details from Mr C for a broker (which I'll refer to here as 'B'). 'B' provided Mr B with all the necessary literature about 'H' and information on how the investment worked. Mr B says 'H' promised a refund of the capital in 12 months, plus paying 5% interest per month which appealed to him as a good way to supplement his income.

Before deciding to invest, Mr B said he spoke to another friend from his social club (RB) who had invested £1.8 million in 'H' and had recommended the investment to Mr C. Mr B has said he also did his own research into 'H' and found nothing of concern.

Another company (which I'll refer to here as 'P') initially facilitated the transfer of the funds Mr B was investing in 'H'. Mr B entered into two loan agreements with 'P' in June 2018 for the sum of £30,000 each. Mr B's partner also funded part of the investment via his Nationwide account.

Mr B was then told to make subsequent payments to another company (which I'll refer to here as 'M') to process because he was told 'P' was experiencing problems with its bank account.

Mr B made the following faster payments as part of the investment:

Date	Amount
6/7/2018	£10,000
6/7/2018	£10,000
6/7/2018	£10,000
31/10/2018	£10,000
27/11/2018	£10,000

Between August 2018 and May 2019 Mr B received nine monthly returns on the investment totalling £18,000. But since then, he says he's been unable to recover any funds from 'P' or 'H'. Mr B's total loss is therefore £32,000.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively.

On 22 September 2023 Mr B made a complaint to Nationwide. In short, he said he'd been the victim of a scam, and that Nationwide hadn't done enough to protect him. Mr B therefore

held Nationwide responsible for his loss. He wanted Nationwide to refund him the £32,000 together with 8% interest and £1,000 for the distress and inconvenience caused.

In short, Nationwide said it didn't consider the payments to represent fraud and would not reimburse the funds. It said both 'H' and 'P' were genuine companies, and that the payments hadn't flagged on its fraud prevention system. But even if they had, Nationwide thought this was unlikely to have uncovered any concerns at the time. It considered this to be a civil dispute.

Mr B referred his complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, she said Nationwide should've questioned Mr B about the payments. But given there was no adverse information about 'P' or 'H' available at that time, she didn't think further questioning by Nationwide would've given it or Mr B any obvious cause for concern. Our Investigator also found there was no reasonable prospect of Nationwide recovering the lost funds or any grounds to award Mr B compensation for distress and inconvenience.

Mr B didn't agree. He said if Nationwide had spoken to him about the payments, then it would've been clear that he'd been introduced to an unregulated investment with 'H' by an *'unregulated introducer'*. Mr B said Nationwide should've warned him of all the risks this presented and missed an opportunity to prevent his loss.

Mr B said that there was no evidence to suggest that he wanted to engage in a high-risk investment – and that he'd have given more weight to advice given by Nationwide than by Mr C or RB.

Mr B also thought Nationwide should've questioned the high level of returns being offered – and how initial returns are often received to entice further investment – as he said was the case here.

### **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 decided not to uphold this complaint. I know this is not the answer Mr B was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation he's found himself in, particularly his poor health, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether Nationwide can fairly and reasonably be held responsible for Mr B's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say at the outset that I have considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Nationwide could've prevented Mr B's loss.

Following a court hearing in July 2020, it's now accepted that Mr B has likely been the victim of a scam. But I accept the five transactions he made towards the investment were authorised payments. So, Mr B is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a building society such as Nationwide, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether Nationwide ought reasonably to have held such suspicions or concerns in relation to Mr B's payments — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if Nationwide acted fairly and reasonably in its dealings with Mr B when he made the payments. Specifically, whether it should've done more than it did before processing the payments — and if it had, would that have made a difference. I also need to decide if Nationwide could've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by Nationwide prior to processing Mr B's payment instructions on 6 July 2018. These were three payments in very close succession that were (individually and collectively) significantly larger than usual payments for Mr B's account in the previous 12 months and were being made to a new payee.

But for me to find it fair and reasonable that Nationwide should refund the payments to Mr B requires more than a finding that Nationwide ought to have intervened.

I would need to find not only that Nationwide failed to intervene where it ought reasonably to have done so — but crucially I'd need to find that but for this failure the subsequent loss would have been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Nationwide wouldn't have revealed the payments were part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented them from being made.

In thinking about this, I've considered what a proportionate intervention by Nationwide at the relevant time would have constituted, and then what I think the result of such an intervention would most likely have been.

To reiterate, Nationwide's primary obligation was to carry out Mr B's instructions without delay. It wasn't to concern itself with the wisdom or risks of his payment decisions.

In particular, Nationwide didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment Nationwide was recommending or even endorsing.

Nationwide's role here was to make the payments that Mr B had told it to make. Mr B had already decided on that investment. And I find that Nationwide couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr B's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr B (which there was not here) would have gone far beyond the scope of what I could reasonably expect of Nationwide in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would have been proportionate here for Nationwide, as a matter of good industry practice, to have taken steps to establish more information about these payments.

What matters here is what those steps might be expected to have uncovered at the time. While there may now be significant concerns about the operation of 'H' and 'P', and the legitimacy of the investment, I must consider what Nationwide could reasonably have established during a proportionate enquiry to Mr B about his payments back in July 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mr B has provided about 'H' and 'P', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court

hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Nationwide or Mr B at the time the July 2018 payments were made.

I think it's also likely Mr B would've told Nationwide that he had documents from 'H' confirming the terms of the investment, together with loan agreements with 'P' which all appeared entirely genuine.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that these concerns only began to surface in the public domain after the relevant payments were made by Mr B.

I've thought next about how Mr B found out about the investment. Mr B has said the investment came about largely via '*word of mouth*' at his social club. But there also seems to have been some dealings with 'B' in setting the investment up. 'B' appears to be an unregulated broker.

Had Nationwide asked Mr B who'd advised him about the investment, then the involvement of his friends (Mr C and RB) and 'B' would've likely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice – as seems to have been the case here.

So, the regulatory status of the investment and how Mr B was introduced to it weren't something that would necessarily have indicated 'H' or 'P' were fraudulent (or that the investment was a scam) at the time Mr B asked Nationwide to make the payments.

Further to that, I've not seen any reason to suggest that Mr B didn't fully trust what Mr C, RB or 'B' were telling him. Mr C had visited 'P's' offices and observed its operations. And the fact Mr C and RB had invested considerably more in 'H' than Mr B (and received returns) – would've, I think, further reassured Mr B that his money wasn't at obvious risk, nor that the returns were unrealistic.

I take Mr B's point about scams often enticing further loss by providing initial returns – and how he thinks this should've been a red flag to Nationwide. But it's equally true that from Mr B's point of view, knowing his trusted friends were receiving returns on their investments – as he was by the time he made the two final payments – would, I believe in these circumstances, have further convinced Mr B the investment was genuine; and likely outweighed any warning Nationwide might've provided to Mr B in this regard.

Given all this, I don't think, on balance, that any advice or warning from Nationwide about 'B' would've likely resonated with Mr B or given him any cause for concern. And any concerns that might've been raised about 'H' or 'P' would've likely, in my opinion, have been allayed by Mr C, RB or 'B'.

All things considered; I don't think it would've been readily apparent in July 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think Nationwide could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would've led to significant doubts about the legitimacy of 'H' or 'P' at that point in time. Neither do I think Mr B could've uncovered such information at the time – he was not at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by Nationwide to have been proportionate to the perceived level of risk of 'H' being fraudulent. I don't think that a proportionate enquiry in July 2018 would've led to either Nationwide or Mr B considering 'H' or 'P' being anything other than legitimate. With that in mind, and all considered, I'm not persuaded that Nationwide was at fault for carrying out the relevant payment instructions, or for not preventing Mr B from making his payments.

In terms of trying to recover the lost funds; I'd expect Nationwide to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mr B contacted

Nationwide. Furthermore, both 'H' and 'P' had gone into liquidation by this point and recovery from 'M' wasn't possible as it was acting as a payment processor for 'P'.

Therefore, I can't say Nationwide had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than three years before.

I have a great deal of sympathy for Mr B and the loss he's suffered. But it would only be fair for me to direct Nationwide to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

### **My final decision**

My final decision is that 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 11 February 2025**.

Anna Jackson  
**Ombudsman**