

The complaint

Mr M and Mrs M complain that Nationwide Building Society won't refund the money they have lost to a scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here.

In summary, on 4 May 2018, Mr M and Mrs M sent an international payment by SWIFT of £50,000, from their account held with Nationwide, to an account held in the United States of America. The payment was a loan they were making to a company based in the USA. Mr M and Mrs M understood they would receive 2.5% interest per month on this money. The terms of the 'loan agreement' set out that the interest would accrue for the first twelve months and after that time Mr M and Mrs M could choose to either receive the interest payments or to continue to let the interest accrue. I understand that to date, Mr M and Mrs M have not received any interest or repayment of the initial loan.

In early 2024, Mr M and Mrs M say they were told their loan account was being closed and were asked to provide their bank details but have not received any money back. They also contacted Nationwide in January 2024, and asked it to look into this matter for them. Mr M explained that he thought they had been scammed, and they were aware that other friends had also lost a lot of money to this scam. For whatever reason Nationwide did not raise a scam claim for Mr M and Mrs M at that time.

In May 2024, Mr M and Mrs M contacted this service. They asked if there was anything Nationwide could do to help them recover the money they had lost. Our investigator contacted Nationwide and asked it to look into Mr M and Mrs M's complaint. Nationwide did not uphold Mr M and Mrs M's complaint. It said, it didn't think it had done anything wrong when it processed the payment in May 2018. It did however pay Mr M and Mrs M £50 for its failure to investigate their complaint when they first raised the matter in January 2024.

An investigator then looked into the complaint. They said they were of the view that Nationwide should have intervened, but they didn't think the complaint should be upheld.

They noted Mr M and Mrs M had told this service they knew relatives of the broker acting for the US company and knew other friends who had invested with the company.

Mr M and Mrs M did not accept the investigator's view. Mrs M noted the investigator had said Nationwide should have contacted them before it processed the payment and provided appropriate warnings and information to allow them to make an informed decision about whether they wanted to proceed with the payment. They also provided information that was now available about the business they had sent the money to and said they *'might well have had second thoughts'* about making the payment if Nationwide had queried it at the time.

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 issued my provisional decision on this complaint on 4 August 2025. In my provisional decision I set out:

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Having very carefully considered this complaint, my provisional decision is that I don't think it should be upheld. I'll explain why.

I am sorry to hear Mr M and Mrs M have lost money, but this doesn't automatically entitle them to a refund from Nationwide. It would only be fair for me to tell Nationwide to reimburse Mr M and Mrs M if I thought it reasonably ought to have prevented the payment or it unreasonably hindered recovery of the funds.

Prevention

Good industry practice requires Nationwide to be alert to fraud and scams and to act in its customers' best interests. This is predicated on there having been a fraud or scam. So, a first consideration in determining Nationwide's obligations here would normally be: were Mr M and Mrs M scammed as they allege? Here though, I don't think the answer to this question makes a difference to the fair outcome of this complaint. This is because if Mr M and Mrs M weren't scammed, Nationwide had no obligation to prevent the payment, and so I couldn't reasonably hold it responsible for not doing so.

On the other hand, if Mr M and Mrs M were scammed:

- A bank's principal duty is to act on its customers payment mandate under the terms of the account. This position has long been recognised in common law. So, if a bank fails to comply with a validly executed payment order, it could be held liable for damages.*
- What that means is the starting point is that a bank is expected to process payments and withdrawals that a customer instructs it to make without due delay. So, presented with a payment instruction, in accordance with the terms of the account, a bank must honour the payment unless there are legal, regulatory, or contractual grounds which may, in exceptional circumstances, allow refusal of the payment instruction.*
- Here it is accepted that the payment was authorised by Mr M and Mrs M, so, under the terms of the account, they are presumed liable for the loss in the first instance. That said, as a matter of good industry practice Nationwide should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect a bank to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.*

In this case, having considered the circumstances of the payment Mr M and Mrs M made, the payment was unusual and extremely large compared to other payments they had made from their account in the previous 12 months. I understand Mr M and Mrs M had previously only made one large payment of £3,125 in November 2017. Given the size of the payment they made via SWIFT, I think it looked very out-of-line with the usual spending pattern for Mr M and Mrs M's account.

So in these particular circumstances, in order to meet its obligations summarised above (assuming, for the sake of argument, that Mr M and Mrs M were scammed), I would reasonably expect Nationwide to have flagged the payment, and then called Mr M and Mrs M to ask, what the payment was for, and for some background to the payment, and to then have proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam.

Given the time that has passed, it is not clear what steps, if any were taken at the time. But even if I were to assume that Nationwide failed to act when it should have done, that alone is not enough to uphold the complaint. I must also be satisfied that any such failing caused Mr M and Mrs M's loss - in other words, that if Nationwide had intervened in the way I would have expected Mr M and Mrs M would likely have acted differently and avoided the loss.

So, I've gone on to think about whether an appropriate intervention or further questions would likely have made a difference. Ultimately, I don't think any intervention by Nationwide would have made a difference or prevented the payment. I say this because when Mr M and Mrs M made the payment, they were led to believe they were making a loan to a legitimate business they had researched both on-line and through personal contacts. I'm not aware of any information Nationwide could or should have known at the time from which it ought to have been concerned Mr M and Mrs M were being scammed.

It could have given Mr M and Mrs M general fraud and scam advice in relation to investing. But ultimately, I don't think I can fairly say it would have been able to give Mr M and Mrs M any information that would have led them to doubt what they already knew, including if they'd undertaken further reasonable research at the time.

I say this because Mr M and Mrs M were receiving advice from a broker they had been introduced to by a family friend and were aware of other friends who had apparently made successful investments with the company. So, even if Mr M and Mrs M had been questioned in more detail about the investment by Nationwide, I don't think it would've highlighted anything that would've caused concern or led Nationwide to believe Mr M and Mrs M were at risk of financial harm from a fraud or scam.

Furthermore, even if Nationwide had intervened and told Mr M and Mrs M to conduct further checks on their investment, I'm not persuaded they would have found any negative information online, as they haven't supplied anything from that point in time that shows this might have been a scam. As Mr M and Mrs M have outlined, they did not have any cause for concern about the investment until early 2024.

Recovery

I've also looked at whether Nationwide took the steps it should have once Mr M and Mrs M contacted it to dispute the payment. After the payment was made, I couldn't reasonably expect Nationwide to have done anything further until Mr M and Mrs M told Nationwide that they thought they had been scammed.

Nationwide has provided evidence to show that it tried to recover the funds, but this has not been possible due to the passage of time since the money was sent.

I realise this means Mr M and Mrs M have lost a significant amount of money. And I'm very sorry they have lost this money. But I think this was ultimately caused by the actions of the business they loaned the money to, and not Nationwide. I can't reasonably ask Nationwide to reimburse Mr M and Mrs M in the circumstances as I don't think it ought reasonably to have prevented the payment or recovered it.

I also note the payment was authorised by Mr M and Mrs M before the introduction of the Contingent Reimbursement Model (CRM) Code on 29 May 2019. Mrs M referred to the CRM Code in her correspondence with this service, but unfortunately it does not apply here.

Neither Mr M and Mrs M nor Nationwide have provided any fresh information or evidence in response to my provisional decision. I therefore find no reason to depart from my earlier conclusions.

My final decision

My decision is that, for the reasons I have set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 6 October 2025.

Suzannah Stuart
Ombudsman