DRN-4222409

The complaint

Mrs B complains that Nationwide Building Society has declined to refund the money she lost when she fell victim in 2017 to what now appears to have been an investment scam. She brings her complaint with the assistance of professional representation, but for readability, in what follows I will refer solely to Mrs B.

What happened

In 2017, Mrs B invested in an unregulated property scheme (that I'll refer to as W). She made this investment through a £10,000 Faster Payments bank transfer from her Nationwide account to W in June 2017. The investment was initially arranged for a fixed term, after which Mrs B kept her money invested with W.

W has since entered liquidation and Mrs B has highlighted significant concerns that it may have been operating fraudulently.

Mrs B reported what had happened to Nationwide in 2022. She complained when it did not reimburse her. She said Nationwide had breached a duty of care by failing to question her about the original payment and, had Nationwide done so, it would have come to light the investment was not legitimate, and her loss would have been prevented.

Nationwide said the payment had gone to an unregulated investment which has since gone into liquidation, and so it did not consider Mrs B had been the victim of a scam — this had been a failed investment. In any event, Nationwide said it wasn't liable for any losses because Mrs B had authorised the payment, and it did not have any reason to intervene or block Mrs B's payment request.

Mrs B referred the matter to our service and one of our Investigators didn't uphold her complaint. The Investigator thought it likely this had been a scam, contrary to Nationwide's position. Furthermore, he thought Nationwide should have spoken to Mrs B about the payment when she'd made it, given the relatively large value. But even had Nationwide done so he didn't think Nationwide (or Mrs B) would have had sufficient grounds to conclude the investment was not legitimate given what it could reasonably have uncovered at the time. He didn't think Nationwide could have prevented Mrs B's loss.

Mrs B maintained that had Nationwide intervened it would have been able to identify several concerning aspects of the investment, and therefore should have warned her this was a scam. Had it done so, this would have stopped her from making the payment, and avoided the loss she has suffered.

As no agreement could be reached, the case was passed to me for 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The starting position in law is that Mrs B is responsible for transactions she's carried out herself. There's no dispute about that here.

However, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I'd expect Nationwide to have been on the lookout for out of character or unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud or scam.

I consider it to be appropriate for a customer's previous account activity, among other factors, to be taken into account when deciding whether a payment instruction does, or does not, present a sufficiently heightened risk that it would justify an intervention before processing the transaction.

Here, Nationwide did not intervene. Arguably it did not need to. While the payment was for a large sum, it seems to me that Nationwide had limited prior account activity on the relevant account against which to compare it.

But even if I were to accept that Nationwide ought to have intervened here and spoken to Mrs B about the payment prior to processing it, I consider it unlikely this would have prevented her loss. While there are now significant concerns about the legitimacy of W's business, these first began to surface in the period surrounding W's liquidation, and therefore several years after Mrs B's payment was made.

I cannot rely on the benefit of hindsight – I must consider what Nationwide could reasonably have established in the course of proportionate enquiry to Mrs B about her payment back in June 2017.

And with that in mind, I don't think it would've been apparent in 2017 that W was likely fraudulent rather than simply a risky investment. I'm not persuaded sufficient information was readily and publicly available at the time which would have caused Nationwide (or Mrs B) specific concerns about this.

Mrs B has provided copies of investment literature I understand she received at the time. This appears professional and on the whole unlikely to have prompted Nationwide to suspect all might not be as it seemed. The documents appear to have given an explanation of the risks involved, recommended investors to seek independent financial advice prior to making an investment decision and indicated that the financial promotion had been approved by an FCA regulated firm. On the face of it, I don't think there was enough here for Nationwide to have reasonably suspected W was other than it seemed.

Mrs B explains that her late husband had initially made enquiries and then spoken to an adviser about W. Mrs B says she relied on this when she proceeded with her investment. Amongst other things she suggests that W (or intermediaries acting on its behalf) did not act in accordance with rules around the marketing of unregulated investments. The unsuitability of this investment for an investor of her type should have been a sign to Nationwide that the advice was not legitimately provided. Nationwide should have identified and warned Mrs B about this.

However, I find Nationwide couldn't have considered the suitability or unsuitability of third-party investment advice without itself assessing Mrs B's circumstances, investment needs and financial goals. Nationwide didn’t have any obligation to step in to protect its customers from potentially risky investments. Taking steps to assess suitability without an explicit request from Mrs B (which there was not) would have gone far beyond the scope of what I could reasonably expect of it in any proportionate response to what, on the face of it, was a seemingly legitimate payment request from its customer.

In short, while I’ve carefully reviewed all of Mrs B’s submissions, I don’t find that significant concerns would (or could) have been readily uncovered by either Nationwide or Mrs B at the relevant time. I can only reasonably expect any enquiries by Nationwide to have been proportionate to the perceived level of risk. All considered, I don’t think it likely that Nationwide could have prevented this payment from being made, or otherwise caused Mrs B not to proceed.

Finally, the recipient bank has confirmed that at the time Mrs B reported the matter to Nationwide, no recovery of her funds could have been possible. So even had Nationwide determined this to have been a scam and attempted to recover the payment, at this point it would have made no difference.

Having carefully considered everything Mrs B and Nationwide have submitted, I don’t find Nationwide could have reasonably prevented Mrs B’s loss here. Neither do I find it materially at fault otherwise.

I appreciate this will not be the answer Mrs B would like me to give her, and I am sorry to have to disappoint her. She has lost a significant sum. But it is simply the case that I don’t consider I can fairly and reasonably hold Nationwide liable for that loss.

My final decision

For the reasons given above, my final decision is that I do not uphold Mrs B’s complaint about Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 11 September 2023.

Stephen Dickie
Ombudsman