

The complaint

Mr S complains that Nationwide Building Society refuses to refund a payment he made to an investment scammer.

What happened

Mr S found an investment opportunity online. After some discussion with the company he had found he agreed to pay £9,600 to buy three shipping containers which would then be leased on his behalf, giving potential returns on his investment of 10-12%. Mr S made this payment on 11 June 2019.

He received some returns on his investment in June 2019 and October 2019, but since then has been unable to get any meaningful response from the company he was dealing with, and has received no further investment returns.

In 2023 Mr S raised a complaint about this with Nationwide. He explained that he had been the victim of a scam and asked if Nationwide could refund his lost money. But Nationwide did not agree that what had happened was a scam, it felt this was a civil dispute between Mr S and the investment company, and so declined to refund Mr S' loss. Mr S remained unhappy, so he referred his complaint to us.

One of our Investigators looked at what had happened and concluded that, contrary to Nationwide's assessment, Mr S had most likely been the victim of a scam. They also felt that, given the size of the payment Mr S made, Nationwide should have asked him some searching questions to ensure he was not at risk of financial harm. However, they concluded that, taking account of the information Mr S had about the investment at the time, it was more likely than not that further questioning from Nationwide would not have brought the scam to light. So they felt Mr S would still have gone ahead with the payment, and that Nationwide could not have prevented his loss.

Mr S disagreed, so his case has been passed to me for review.

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 reached the same conclusion as our Investigator, and for the same reasons.

It's not disputed that Mr S authorised the payment that is in dispute. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr S is responsible for that payment.

Because of this, Mr S is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts

to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, if I'm satisfied that this was a scam, then I need to decide whether Nationwide acted fairly and reasonably in its dealings with Mr S, or whether it should have done more than it did.

I've first considered whether Mr S was indeed the victim of a scam, and I'm satisfied he was. I say this because of the large volume of articles, reviews and comments available online from the last few years which consistently state that investors have received little to no return from the company in question and that it is very likely a scam company. I've seen nothing that demonstrates to me that there was a legitimate investment here, and I think it is far more likely that this was a sophisticated and long running scam.

So on that basis, my next consideration is whether there were fraud triggers that ought to have prompted intervention from Nationwide.

I think the payment in question does stand out as sufficiently unusual when considering the normal operation of Mr S's account. He'd not made payments of this magnitude in the months leading up to it and it was to a new payee with an international account. I therefore think Nationwide should have intervened directly – rather than relying on written warnings – to ask Mr S some questions about the payment.

And while Nationwide had no duty to protect Mr S from a bad bargain or give investment advice, I think it should have asked him some suitable probing questions to find out whether he was likely to be at risk of financial harm from fraud.

Investment scams tend to carry common features. For example, these can include rates of return which are too good to be true, receiving the opportunity to invest via an unsolicited offer and cold call, fraudsters applying pressure to their victims to invest quickly and not allowing them to withdraw their funds.

Against this backdrop I'd have expected Nationwide to ask Mr S some questions to see if there were any signs that this was an investment scam (as described above). Had it done so, I'm persuaded Mr S would've explained he was buying shipping containers with the intention to lease them out for a return on his investment, as he doesn't appear to have been coached by the scammer to lie about what he was making the payment for. I'd then have expected Nationwide to perhaps ask questions such as how Mr S found this investment opportunity, what paperwork he might have received about it, and whether he'd done any research into the company he was dealing with.

I've thought very carefully about what Mr S would've said in response. Of course, I can't know for sure, so I've thought about what I think is more likely than not to have happened, taking into account the particular circumstances of this case.

This appears to have been a sophisticated investment scam. The scam company had a legitimate looking website, corresponded with Mr S for an extended period prior to his investment, and provided Mr S with detailed and consistent paperwork regarding his investment. There also weren't any warnings recorded about this company by the Financial Conduct Authority. And Mr S had found the investment opportunity himself, he hadn't been cold called or otherwise contacted out of the blue and asked to invest.

So given that there don't appear to have been any clear hallmarks that this might be a scam at the time Mr S invested, overall I think it's more likely than not Nationwide would've been

satisfied Mr S wasn't at risk of falling victim to an investment scam. And from what Mr S has shown us he had received at the time, I think Mr S would've most likely felt comfortable continuing with the payment.

So, with all this in mind, I'm not persuaded intervention from Nationwide would've made a difference and prevented Mr S's loss in the particular circumstances of this case.

I also don't think Nationwide had the option to recover the payment. Mr S doesn't appear to have flagged it as a scam with Nationwide until several years after the payment took place. Nonetheless, Nationwide contacted the receiving bank to see if any funds could be recovered, but it confirmed that no funds remained by that time.

I know this will be very disappointing for Mr S, but for the reasons explained I don't consider that it would be fair or reasonable to ask Nationwide to refund Mr S' losses.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 December 2023.

Sophie Mitchell
Ombudsman