

## **The complaint**

Mr B complains that Nationwide Building Society won't refund money he says he lost to a scam.

In bringing this complaint Mr B is represented by a third-party, but for ease of reading I'll refer to Mr B throughout the decision.

## **What happened**

In June 2018, Mr B says he was cold called by a broker and offered an opportunity to invest into an unregulated property scheme (that I'll call W). Mr B made sent a payment of £5,050 via a payment service provider for the purpose of investing £5,000 in an unregulated property scheme (that I'll call W).

Mr B received two interest payments from the investment. But after this the payments stopped, and Mr B thought he had been a victim of a scam.

Mr B complained to Nationwide in October 2022. He argued that Nationwide had breached its duty of care by failing to question the payment and, had it done so, he wouldn't have gone ahead, and the loss would have been prevented.

Nationwide said Mr B made the payments to a genuine company which later fell into difficulty rather than a scam. And it didn't agree to refund the money he'd lost.

Mr B didn't accept this outcome and referred the matter to our service. But our Investigator didn't uphold the complaint. He said that the payment didn't stand out as being particularly unusual or concerning - when compared to Mr B's normal account usage, so Nationwide would have had no cause to question it. And he added that even if Nationwide had intervened, he didn't think it would have prevented Mr B from making the payment based on the information available about W at the time. Mr B responded in detail disagreeing with the outcome reached.

In summary, he said that Nationwide should have intervened when he instructed the payment. And that all high value payments should be flagged irrespective of the general account usage. He pointed out that the payment here was to a new payee and previous large payments were to an account in his own name and had been undertaken 12 months before the payment in dispute.

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.

Having done so, I'm not upholding this complaint and for largely the same reasons as our Investigator. I realise this will come as a disappointment to Mr B, but for the reasons I'll go on to explain I don't think Nationwide has acted unfairly or unreasonably.

Mr B doesn't dispute that he made the payments from his Nationwide account. This means they were authorised by him. So, the starting point under the Payment Services Regulations 2017 and the account terms and conditions is that Mr B is responsible for the payments as well as any resulting losses.

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, Nationwide should, fairly and reasonably, have been on the lookout for out of character and unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud.

It would clearly be an onerous requirement for Nationwide to question every payment and 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 does, or does not, present heightened risk.

Having reviewed Mr B's account statements, I can see that he made a number of high value payments a year before the payment in dispute - some of which were more than the payment in dispute (although, I accept that these payments went to an account in Mr B's name held elsewhere). But the payment in dispute didn't reduce the balance of his account his account significantly and didn't form part of a concerning pattern of payments – both of which might be indicators of fraud. Overall, I don't find that Nationwide ought to have been concerned about the payment and, therefore, it follows that I don't find it made a mistake by failing to intervene.

But, even if I were to accept that Nationwide ought to have spoken to Mr B about the payment, it's difficult to see how any intervention would have prevented his loss. After all, it doesn't appear that any significant concerns were raised about W until sometime after the payment was made and it entered liquidation. Based on what appears to have been known at the time, I can't reasonably conclude that Nationwide would have recognised the risk that Mr B would lose his money and I don't think there was sufficient information in the public domain for Nationwide to be particularly concerned about W.

I note Mr B has mentioned a discrepancy in the recipient details. I take this to mean that the entry on Mr B's statements doesn't refer to W. But it seems in this case that W used an e-money institute as a payment service provider to process the transaction. As the payment service provider used is legitimate and regulated, I don't find that Nationwide would have considered this to be unusual or concerning.

Mr B has mentioned the lack of regulation of the investment and the high-risk nature of it and that Nationwide should have highlighted this to Mr B. But I don't think that Nationwide would be expected to go into the level of detail Mr B expects – particularly, as Nationwide wasn't providing any investment advice to Mr B. In any event, set against the weight of evidence at the time that W was operating legitimately would, in any case, be unlikely to have deterred Mr B from going ahead.

Finally, I've thought about whether Nationwide had the opportunity to recover the funds for Mr B. But I think it's unlikely any attempts to recover the money would have been successful given the time that has elapsed since the payment was made and when the complaint was raised with Nationwide – particularly, as W went into liquidation in the interim period. So, I'm not persuaded that Nationwide did anything wrong when it didn't attempt to recover the funds.

I'm sorry that Mr B has lost out, but I've decided that Nationwide isn't responsible for his loss.

**My final decision**

For the reasons I've explained, 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 22 November 2023.

Sandra Greene  
**Ombudsman**