

The complaint

Mr and Mrs F complain that Nationwide Building Society didn't protect them from an investment scam.

Mr and Mrs F are being supported in making their complaint by a representative. But for ease, I'll refer to Mr and Mrs F in this decision.

What happened

Between 27 and 30 May 2017 Mr and Mrs F transferred a total of £39,000 (in three instalments of £10,000 and one of £9,000) as part of an investment in a company (which I'll refer to as 'D').

The payments weren't made directly to 'D' – instead they were made to a company which I'll refer to here as ('B') before being transferred to 'D' for the purposes of the investment.

Mr and Mrs F received annual statements in 2018 and 2019 from 'D' confirming the annual interest earned on their funds. They said they were expecting an annual statement sometime in mid-2020 and became concerned when this wasn't received by August 2020. Mr and Mrs F said it was at this point they came across an article about 'D' which raised several concerns, and they began to suspect they had been the victims of a scam.

In June 2023 Mr and Mrs F complained to Nationwide. They said Nationwide ought to have prevented the loss they'd incurred from their investment into D. Mr and Mrs F wanted the funds returned with 8% interest, as well as compensation.

Nationwide said it had done nothing wrong. It said there was still no conclusive evidence that the investment was a scam. And even if it had intervened, it didn't think this would've made a difference given there was nothing negative or suspicious about 'D' at the time. It said 'D' was a '*registered and genuine*' company.

Mr and Mrs F referred their complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, she thought Nationwide should've identified that these payments were unusual for Mr and Mrs F and contacted them prior to processing the instructions. But she thought this would've unlikely prevented Mr and Mrs F's loss given there was nothing at the time to indicate 'D' (or 'B') weren't legitimate.

Mr and Mrs F didn't agree. In short, they agreed with our Investigator, insofar as the payments should've been flagged by Nationwide as unusual. But Mr and Mrs F said that if Nationwide *had* intervened, and asked appropriate questions – they would've been alerted to the following and their loss would've been prevented:

- That the investment was an unregulated collective investment scheme (UCIS) not regulated by the Financial Conduct Authority (FCA). And that Nationwide should've been aware of the risks associated with UCISs.

- That the investment was high risk, and the promised high returns meant it was indicative of a Ponzi scheme investment scam. Because of that, Nationwide should've advised them to seek financial advice and to check the FCA website.
- That they were not high worth customers nor experienced investors. And so Nationwide should've been aware the investment wasn't appropriate for them.
- That the payments were being made to an intermediary ('B') not direct to 'D'. This should've caused concern for Nationwide.
- Nationwide should've been concerned at the fact 'D' was based in Germany and questioned them on their understanding of how the investment worked (including the involvement of 'B') and when they were likely to see any returns.

Mr and Mrs F were also concerned that our Investigator hadn't been procedurally fair in her consideration of their complaint. In particular, that she hadn't considered the specific circumstances of their complaint; nor had she considered some key evidence (an expert report) which they said confirmed 'D' was operating as a fraudulent Ponzi scheme.

I've been asked to review everything afresh and reach 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've decided not to uphold this complaint. I know this is not the answer Mr and Mrs F were hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation they've found themselves in, and I can understand why they'd want to do all they can to recover the money they lost. But I need to decide whether Nationwide can fairly and reasonably be held responsible for Mr and Mrs F'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 summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this.

I want to also assure Mr and Mrs F that I've fully considered all the information provided – including the FCA regulatory obligations report they've provided; and the expert report Mr and Mrs F think is a key piece of supporting evidence that 'D' was operating as a scam.

I've not referred specifically to every submission within this decision; but that isn't because I've not addressed it or because I've ignored the point. 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 and Mrs F's loss.

I accept the transactions Mr and Mrs F made were authorised payments. So, Mr and Mrs F are presumed liable for the loss in the first instance.

However, I've considered whether Nationwide should've done more to prevent Mr and Mrs F's loss, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly unusual or suspicious.

So, taking all of this into account, I need to decide if Nationwide acted fairly and reasonably in its dealings with Mr and Mrs F when they 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.

Was this a scam?

Whether Mr and Mrs F were the victims of a scam, or a failed investment, is a difficult point to resolve conclusively – particularly given the passing of time here.

I appreciate that Mr and Mrs F have provided a substantial amount of information which they say proves 'D' was operating as a scam. And they have specifically referred to an expert report which they believe to be pivotal in supporting this. But for the purpose of this decision, I don't need to make a finding on that point. Instead, I'm focusing on whether action by Nationwide could've prevented Mr and Mrs F's loss based on the information available at the time they made the payments.

Should Nationwide have intervened before processing the payments?

I agree with our Investigator and Mr and Mrs F on this point. The payments were to a new payee for a total of just under £40,000 over a relatively short period. And having looked back over Mr and Mrs F's bank statements for the previous 12 months – I think the payments do stand out as unusual. And so, I think Nationwide should've intervened to understand more about the nature of the payments Mr and Mrs F were making.

Would intervention by Nationwide have made a difference and prevented Mr and Mrs F's loss?

Having given this point very careful thought, I'm not persuaded that any reasonable level of intervention by Nationwide would've likely made a difference. I'll explain why.

Firstly, it wasn't Nationwide's role to provide investment advice to Mr and Mrs F. That would've included advice about the nature and regulation of the investment, or the specific risks to Mr and Mrs F associated with it. And I'm also mindful that the prevalence of investment scams was far less in 2017 than it is now.

But even if Mr and Mrs F had been prompted by warnings given by Nationwide to carry out checks, I'm not persuaded this would've given them any obvious cause for concern.

As Mr and Mrs F have said themselves, they had no reason to question the legitimacy of the investment until 2020 when they stopped receiving their annual statements.

Both 'D' and 'B' were genuine companies and there was no information in the public domain at the time the payments were made indicating 'D' was a scam. Mr and Mrs F have also alleged 'D' was running a Ponzi scheme, the nature of which means it often takes some time for what is going on to become apparent.

I think it's also likely Mr and Mrs F would've told Nationwide that they had documents from 'D' confirming the terms of the investment, which appeared entirely genuine.

All this suggests to me that it's more likely than not Mr and Mrs F would've proceeded with the transactions – even if Nationwide had alerted them to the risks involved and the checks they should make. I think it would've taken something more credible, like regulatory warnings, or anything in the public domain suggesting 'D' (or 'B') wasn't legitimate to have concerned Nationwide or made Mr and Mrs F pause and think more about their decision to invest.

Taking everything into account, I don't think, on balance, any action from Nationwide is likely to have made a difference and prevented Mr and Mrs F's loss. So, I don't think it's fair or reasonable to hold Nationwide accountable here.

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 six years had passed by the time Mr and Mrs F contacted Nationwide. Furthermore, the funds paid to 'B' were transferred onto 'D'; and as I understand it, 'D' was declared bankrupt in 2020.

Therefore, I can't say Nationwide had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'D' was declared bankrupt around three years earlier.

I have a great deal of sympathy for Mr and Mrs F and the loss they've suffered. But it would only be fair for me to direct Nationwide to refund their 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 Mrs F and Mr F to accept or reject my decision **before 23 May 2024**.

Anna Jackson
Ombudsman