

The complaint

Mr and Mrs L have complained that Nationwide Building Society (“Nationwide”) failed in its duty to protect them from becoming victims of an investment scam.

What happened

Mr and Mrs L have used the services of a professional representative to refer their complaint to this service. I’d like to reassure them that whilst I’ve read everything Mr and Mrs L and their representative have provided, I’ll only refer to Mr and Mrs L in my decision.

Mr and Mrs L have explained that they were approached in 2018 by an introducer with an opportunity to invest in an overseas scheme, which I’ll call “D”. The scheme promised annual fixed returns of 10% interest on the amount invested, plus a 10% bonus at the end of the term, and the return of their initial investment.

Mr and Mrs L were given some paperwork that explained the returns they could expect. They decided to go ahead with the investment.

On 18 February 2018 Mr and Mrs L set up a new payee from their Nationwide account to fund the investment. They then made five payments of £10,000 each to the new payee, on the same day. They say that the payments they made were inconsistent with the previous activity on their account. They’ve also highlighted the fact that five large payments in quick succession to a new payee is unusual.

Mr and Mrs L explain that they weren’t aware they had been scammed until they were proactively contacted by their representative advising them that this may be the case.

Mr and Mrs L have complained that Nationwide didn’t protect them from losing their money as part of a scam, because it didn’t intervene or ask them any questions about the payments. They say that with minimal questioning, Nationwide would have recognised the characteristics of the payments were consistent with a scam and should have subsequently given them sufficient warnings about the risks involved.

Mr and Mrs L have highlighted that had it questioned them further, Nationwide would have realised that the returns they’d been promised were completely unrealistic. They also say a simple internet search by Nationwide would have revealed that D had not filed annual financial returns with Companies House for a number of years, and this would have given Nationwide further opportunity to intervene before following Mr and Mrs L’s instructions to make the payments.

Mrs and Mrs L complained to Nationwide, but their complaint wasn’t upheld. In its response Nationwide said that although there is an ongoing investigation into D, it hasn’t been confirmed that this is a scam, as opposed to a bad investment. It said that at the time the payments were made, D was being recommended as an investment by regulated financial advisers. It also said that the payments weren’t unusual as Mr and Mrs L had made similar payments from their account in the past. Nationwide also said that its “online banking warnings are there to protect members prior to them completing the payment and it’s up to

the member to select the correct one, take the warning on board and choose whether to continue having been told to do additional checks/research and made aware of the risks.”

As Mr and Mrs L were unhappy with Nationwide’s response, they referred their complaint to this service.

One of our investigators looked into Mr and Mrs L’s complaint but she didn’t recommend it should be upheld. In summary she didn’t conclude that the payments Mr and Mrs L made were unusual enough to alert Nationwide that there was a risk they were being defrauded. She also said that even if Nationwide had intervened in any of the payments, it’s likely Mr and Mrs L would’ve still made them as there was no reason to suspect at that time that the investment wasn’t genuine.

Mr and Mrs L didn’t agree with the investigator’s opinion so their case has been passed to me to make a decision. They provided further comments and an “Expert Report” on the banking regulations in place at the time of the events in question.

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’m sorry to disappoint Mr and Mrs L but having considered everything I’m afraid I’m not upholding their complaint. I’ll explain why.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer’s account.

But that’s not to say that the payments have to be processed *immediately*, without the firm questioning or intervening in the payment if it has reasonable ground to suspect its customer may be at risk of harm. In fact, firms are required by the regulations under which they operate to have effective systems and processes in place to minimise the risk of harm to their customers.

Following our investigator’s opinion I contacted Nationwide to ask for some further information about the online banking warnings it says that it displayed before Mr and Mrs L made the payments in question. Nationwide said that as the payments were made in February 2018, this was before the introduction of warnings, which started in March 2019. It’s also been unable to give much information about any questions it asked when the payments were made. So I’ve gone on to consider what it should have done, and if that’s more than it did do, whether that would’ve made a difference.

Mr and Mrs L’s account transaction history shows transfers of similar, and higher, values in the months leading up to the payments in question. For example, a payment of £27,260 was made on 31 July 2017 and one of £50,000 was made on 27 January 2018, as well as several other transfers of £10,000 and above.

Mr and Mrs L say they sent the £50,000 to D as five separate payments due to limits in place in Nationwide’s systems at the time. As there would have been a way to make a single payment of £50,000 should they have wanted to, I think Mr and Mrs L’s method to bypass the security systems in place, especially bearing in mind their other account activity, means Nationwide wasn’t given the opportunity to detect and intervene in the same way it might otherwise have done if it had been aware of the large payment Mr and Mrs L were making.

Whilst there's some activity to support the idea that the payments weren't out of character for Mr and Mrs L's normal account behaviour, the rapid succession of the five payments made to a new payee makes me think that Nationwide still could have intervened in at least one of them. But even if it had, I think it would've been sufficiently reassured based on everything and the potential scam wouldn't have been uncovered.

I say this because I'm aware that at the time the payments were made, the investment opportunity in D was being recommended as a genuine investment by regulated financial advisers. Even though Mr and Mrs L weren't introduced to the opportunity in this way, if Nationwide had asked more questions, based on what Mr and Mrs L would likely have told Nationwide, I don't think it'd have thought Mr and Mrs L were being scammed. Additionally, Mr and Mrs L received paperwork in relation to their investment, and they haven't provided me with any persuasive evidence that they have indeed been scammed. I'm further persuaded about this because as our investigator noted, there were no warnings or adverse information about D at the time.

Having considered everything, for the reasons I've explained, even if Nationwide had done more, I don't think it would've uncovered that Mr and Mrs L were falling victim to a scam, so I don't think this would've led to a different outcome.

I've carefully considered everything that has been provided by Mr and Mrs L, and their representative. And I'd like to reassure them that even if I haven't specifically mentioned a document or point they've raised, I've thought carefully about what's fair and reasonable in the overall circumstances of this complaint.

Having done so, for the reasons I've set out above, I don't hold Nationwide responsible for the losses Mr and Mrs L have experienced, so I'm afraid I don't uphold their complaint.

My final decision

I do not uphold Mr and Mrs L's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 12 September 2024.

Sam Wade
Ombudsman