

The complaint

Mr R has complained that Nationwide Building Society won't refund the money he lost in what he says was a scam.

What happened

In mid-2018, Mr R was introduced to a European property firm through an introducer. He was provided with literature, and invested £100,000 into a two-year fixed-term loan note with a 10% return promised. He received £5,000 of returns in 2019, then the firm fell into financial difficulties and liquidated. He says he was scammed and Nationwide should have prevented him from sending the money. Nationwide didn't think they were liable for Mr R's loss.

Our investigator looked into things independently and didn't uphold the complaint. They found that Nationwide didn't have sufficient reason to think this was a scam at the time. Mr R's representatives didn't agree, so the complaint's been passed to me to decide.

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 doing so, I have read and carefully considered everything which both sides have provided. I do understand that Mr R's representatives would like me to address things on a point by point basis. But we are an informal alternative to the courts, here to resolve complaints quickly and with minimal formality. So we do not typically address things on a point by point basis in the way they might like, and I do not see a need to do so here. Instead, I will focus my decision on what I've found to be the key points.

From what I can see, investigations are still ongoing into the property firm in question, and it has not been established for certain whether they were really operating a scam or not. But given the concerns that have been raised about the firm, and given that I wish to address the crux of Mr R's complaint, for the purposes of this decision I will assess things on the basis that he was scammed.

I appreciate that it cannot have been easy for Mr R to lose such an amount of money, not least if it was done fraudulently, and so he has my sympathy. I also appreciate why he feels that his money should be returned. It's worth keeping in mind that it's the scammers who would be primarily responsible for any fraud committed, and who would really owe Mr R his money back. But I can only consider what Nationwide did. Having carefully considered everything that both sides have said and provided, I can't fairly hold Nationwide liable for Mr R's loss. I'll explain why.

It's not in dispute that Mr R authorised the payment involved. So although he didn't intend for the money to go to scammers, under the Payment Services Regulations he is liable for the loss in the first instance. And broadly speaking, Nationwide had an obligation to follow his instructions – the starting position in law is that banks and building societies are expected to process payments that a customer authorises them to make.

Nationwide should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. I also accept that a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. Having thought carefully about the circumstances of this case, not least the sheer size of the payment involved, I think Nationwide should reasonably have made further reasonable enquiries about it with Mr R.

However, even if Nationwide had flagged the payment and given Mr R scam warnings, or asked reasonable questions about his reasons for paying, I think it's most likely that they would not have uncovered a scam, and it's more likely than not that Mr R would still have gone ahead.

I say this because Mr R was paying a long-standing company, which at that time had no relevant warnings linked to it. Mr R had been given an assessment of appropriateness where it was recorded that he was a high net worth individual, along with literature which was well-written and professional and would have looked legitimate, and which had been approved by a long-standing FCA-regulated business. The returns on offer, while substantial, were not so unviable or excessive that I'd expect them to have been of concern to Nationwide – bearing in mind that the money was being given as a loan. And the investigations, warnings, FCA de-authorisation, liquidation, and other articles which Mr R's representatives referred to either did not exist yet or had not happened yet at the point at which Mr R made this payment. Back in mid-2018, I don't see that Nationwide would've had sufficient basis to conclude that this was a scam.

Mr R's representatives made a number of arguments about the way the property firm operated. But I would not expect Nationwide to have carried out a deep dive into the firm's accounts, how it allocated funds, or historic ombudsman service cases about the approving business – it was not giving Mr R investment advice; in this interaction it was just processing his payment. Similarly, the representatives made arguments around the suitability of such a high-risk investment. But an investment being high risk does not necessarily mean it's a scam. And again, as Nationwide were not giving Mr R investment advice, I would not expect them to have assessed its suitability.

Ultimately, back in mid-2018, there were not sufficient hallmarks of a scam for Nationwide to have picked up on here. So I would not expect Nationwide to have stopped this payment, nor for scam warnings to have most likely dissuaded Mr R. At the time, the matter would've looked legitimate to him, having been provided with professional documentation approved by an FCA-regulated business. I cannot reasonably conclude that Mr R would have avoided this loss but for any clear error on Nationwide's part.

Next, I've considered whether Nationwide could have done more to recover Mr R's money after he told them this was a scam. But the firm involved was based outside the UK, and went into liquidation quite some time before he reported this to Nationwide. I'm afraid it was not realistically possible for Nationwide to recover the money here.

Mr R's representatives made references to other cases we've upheld. As they know, we look at each case on its own merits. I'll note that the cases they've referred to had prominent hallmarks of scams for the banks involved to pick up on – for example, the use of screen monitoring software by the scammers, sharing passwords with the scammers, the use of cryptocurrency, finding the investment through social media, and so on – which were not present here. I've explained above why I can't hold Nationwide liable in this particular case.

So while I'm very sorry to hear about what happened to Mr R, I don't think Nationwide should be held responsible for his loss. And so I can't fairly tell Nationwide to refund Mr R's money in this case.

My final decision

For the reasons I've explained, I don't uphold this complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 February 2024.

Adam Charles
Ombudsman