

The complaint

Mrs K complains that Nationwide Building Society did not refund a series of transactions she says she lost to a scam.

What happened

Mrs K says she was approached by a broker who introduced her to a company I'll call 'H', who were a real estate and property development company and were the parent company of a group of companies. Mrs K invested in several loan notes with H connected to various developments it was involved in, and she was told she would receive returns of 12% per annum, with bonuses thereafter once the properties were sold. She made several payments between November 2018 and January 2020, totalling over £71,000.

Mrs K did not receive any returns on her investment, despite being promised interest on several of her loan notes. Following this, H went into administration and Mrs K now believes the investment was not genuine. She raised a scam complaint with Nationwide in August 2023, and they issued a final response letter. In this, they felt it was more likely H was a genuine company at the time of the transactions so thought this was a civil dispute and did not meet the definition of a scam under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).

Mrs K referred the complaint to our service and our Investigator looked into it. They did not think there was enough evidence to conclude this was a scam and noted that H had completed three development projects it had previously worked on, but later entered financial difficulty. So, they thought it was more likely it was operating as a genuine business, and this was therefore a civil dispute.

Mrs K's representative disagreed with the outcome. In summary, they did not think Mrs K's vulnerabilities, such as her ill health, had been considered in the view. They felt the payments were large so should have been referred for further checks and if they had, they would have found the investment was not regulated and was introduced by an unregulated agent with high pressure tactics. They also said introducers were given incentives to recommend new investors, that the movement of funds within H and its companies was odd and this resembled a Ponzi scheme.

As an informal agreement could not be reached, the complaint has been 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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

The CRM Code provides additional protection from APP scams, but only in certain circumstances. For example, the CRM Code only applies where the victim's payment meets the CRM Code's definition of an APP scam. Further to this, the CRM Code came into effect on 28 May 2019 and isn't retrospective. As that's the case, only the payments made by Mrs K after 28 May 2019 are covered by the CRM Code, the payments made before it fall outside of it.

Payments made before 28 May 2019

I've considered whether there is any other reason, outside of the CRM Code, why I might be able to ask Nationwide to reimburse Mrs K's loss. Nationwide should fairly and reasonably have had systems in place to look out for out of character or unusual transactions, or other signs that might indicate that its customers were at risk of fraud. So, I need to decide whether they acted fairly and reasonably in their dealings with Mrs K.

In order for me to find in Mrs K's favour in relation to the payments before the CRM Code came into effect, I'd need to be in a position to say that Nationwide's actions, or inactions, led to the loss. In short, I'd need to be satisfied that they could've, or should've, identified that Mrs K was falling victim to a scam and prevented the payments from being made. Based on what I've seen, I don't think they'd have been able to do so.

Based on the circumstances of the payments, I'm not persuaded that proportionate questioning by Nationwide would've likely identified any cause for concern about the payments Mrs K was making. I say this as I don't think the information Mrs K would've been able to provide would've led Nationwide to be concerned that she was at the immediate risk of financial harm. H appeared to be a genuine company that had been in operation for several years, with a seemingly successful track record. And they had delivered on a number of projects in the United Kingdom. So, I don't think Nationwide would have had concerns that the investments were not genuine had they asked Mrs K about the transactions.

Payments made after 28 May 2019

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mrs K's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

- (ii) *(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Mrs K to demonstrate that she is the victim of an APP scam. When deciding if Mrs K is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mrs K thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mrs K understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mrs K has said she thought she was investing in a property development company. I haven't seen anything to suggest that she didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.
- I haven't been provided with evidence following an investigation by an external organisation which concludes that H was operating fraudulently. Administrators have referred to completing a bank account analysis looking at the movement of funds within the company's bank account. This analysis has been completed but no further details were provided in the most recent update.
- Mrs K's representatives have said the introducer was unregulated and was paid a high commission to bring in new investors. While I appreciate their comments, whether the introducers were regulated or whether they received any commission does not evidence that H set out to defraud its investors. Or that it did not intend to invest money into development projects as Mrs K understood.
- I've also not seen anything from the administrators of the company which suggests the company was operating a scam or that the transactions carried out by the company and other connected companies were done with any intention other than putting investor's funds towards development projects. And I haven't been provided with evidence of any investigation by an external organisation which concludes that the company was operating a scam.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took Mrs K's payments was different to hers. So, I consider Nationwide acted fairly in not considering Mrs K's complaint under the CRM Code.

I also want to assure Mrs K that I have considered her vulnerabilities as part of this decision. As I have determined the payments cannot be considered under the CRM Code, Nationwide was not required to automatically reimburse Mrs K if she was found to be vulnerable as set out in the Code. And while outside of the Code, we would expect a bank to make reasonable adjustments and treat vulnerable customers fairly, I've seen no indication that Nationwide was aware of Mrs K's vulnerabilities to be able to make reasonable adjustments as and

where needed.

If material new evidence comes to light at a later date Mrs K can ask Nationwide to reconsider her fraud claim.

I'm really sorry to disappoint Mrs K, as I know she's lost a significant amount of money. But I'm not satisfied that I can fairly ask Nationwide to refund her based on the evidence that is currently available.

My final decision

I do not uphold Mrs K's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 21 October 2024.

Rebecca Norris
Ombudsman