

The complaint

Mrs D is unhappy that Nationwide Building Society (“Nationwide”) won’t refund her the money she lost, to what she believes to be a scam.

In bringing her complaint to our service, Mrs D has used the services of a professional representative. For simplicity I will largely refer to Mrs D throughout this decision, even when referencing what her representatives have said on her behalf.

What happened

The background to this complaint is well known to both parties, so I won’t repeat it in detail here. But in summary I understand it to be as follows.

In or around September 2019, Mrs D came across an investment opportunity online. She expressed an interest and was subsequently contacted by a broker, who introduced her to an opportunity to invest in a company, who I’ll refer to as ‘H’. H was looking for investors to fund ‘loan notes’ to back proposed residential property developments, it promised returns of 12-15% per annum.

Mrs D decided to invest and, on 9 September 2019, made two transactions of £5,000 (£10,000 in total) from the sole account she holds with Nationwide, to the account details she was provided.

It doesn’t appear that Mrs D received any returns on her investment and eventually, H went into administration. Mrs D felt she had been the victim of an investment scam. She raised a scam claim with Nationwide, but Nationwide didn’t uphold her complaint.

Mrs D then brought her complaint to this service. One of our Investigators looked into things but didn’t think the complaint should be upheld. In summary, they reviewed it under the Lending Standards Board’s Contingent Reimbursement Model (“CRM Code”). Having done so, based on the evidence, they were unable to say that H had set out to deliberately defraud investors and the payments therefore didn’t meet the CRM code.

Mrs D’s disagreed with our Investigators view. As an 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.

It isn’t in dispute that the payments in question were authorised. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that Mrs D is liable for the

transactions. But she says that she has been the victim of an authorised push payment (APP) scam.

Nationwide has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

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

I've therefore considered whether the payments Mrs D made to H fall under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

In order to determine if Mrs D has been the victim of a scam, I have to consider if her intended purpose for the payment was legitimate, whether the intended purposes her and the company she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Mrs D's representative has not provided me with much evidence on Mrs D's specific investment. They have said Mrs D was intending for the funds to be invested in a property development company and she was expected to see annual returns of between 12-15%. From the limited information I've seen on this individual case and from my wider understanding of H and information this service has received from third parties, I see no reason why Mrs D would not have thought this was a legitimate investment.

I've gone on to consider whether H's intended purpose for the payments aligned with what Mrs D intended as set out above. I've seen evidence that three building projects were completed by H. They had other projects ongoing, however these had to be sold to other developers after they entered into financial difficulty. On balance, I think this shows H was a legitimate company involved in legitimate building projects, and I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors.

I think H's intended purpose for the funds aligned with Mrs D's and nothing I have seen indicates to me that H intended to defraud her. Instead, I think it's more likely this was a failed investment. So I don't think it meets the definition of an APP scam and therefore Nationwide hasn't got any obligation to refund Mrs D under the CRM code.

I'm aware that H went into administration, but I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by H and connected companies were done with any intention other than putting investors' funds towards development projects. I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Mrs D's money for a different purpose.

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 D's payments were different to hers.

Mrs D's representatives have also highlighted that she was vulnerable at the time of the payments. I understand and I'm sorry that this must have been a difficult time for Mrs D, I have no doubt this loss has impacted Mrs D, but as explained above, I think it's more likely this was a failed investment instead of a scam. So, I therefore don't think Nationwide needed to take this into account, when considering the CRM code.

If material new evidence comes to light at a later date, Mrs D can ask Nationwide to reconsider her fraud claim in respect of the transactions she made in September 2019. But, overall, whilst I'm very sorry to hear of Mrs D's loss, I don't think it was unfair for Nationwide not to refund Mrs D under the considerations of the CRM code, or for any other reason – so I can't reasonably ask Nationwide to reimburse her.

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 D to accept or reject my decision before 17 April 2025.

Stephen Wise
Ombudsman