

The complaint

Mr B complains that Nationwide Building Society ('Nationwide') won't reimburse the money he lost when he says he fell victim to a scam.

What happened

Mr B says that he was introduced to an investment opportunity with a company I'll call H in this decision. H was involved in property development. Mr B says he checked H on Companies House and decided to invest in a loan note. He made further payments to H which I have set out in the table below.

Date	Amount
21/01/19	£10,000
21/01/19	£2,500
11/02/19	£10,000
11/02/19	£2,500
04/03/19	£10,000
24/04/19	£10,000
24/04/19	£5,000
Total	£50,000

Mr B's letter of complaint from his representative didn't include the first two transactions to H in January 2019. I imagine this was a mistake, or they were not included because Mr B received what he expected in respect of the initial payments.

Mr B didn't receive the returns he expected, and H went into administration in January 2022. Mr B believes the investment wasn't genuine and that he is the victim of a sophisticated scam.

He complained to Nationwide in January 2024 and said it failed to comply with PAS 17271:2017 (the PAS Code) and FCA Principle 6. In support of his belief H was operating a scam he referred to the high rates of interest paid to investors and the high commissions paid to introducers, which he says meant "a credit event was inevitable". H also traded while insolvent and was late to file accounts.

Nationwide didn't agree to reimburse Mr B. It said H was a genuine business that had run into financial difficulties, and that it had no reason to intervene at the time the payments were made as it didn't have concerns.

Mr B was unhappy with Nationwide's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said there was insufficient evidence to conclude that H didn't intend to provide the agreed

investment or make the returns it set out. This meant that he couldn't ask Nationwide to consider Mr B's complaint under the CRM Code. The investigator also said that intervention by Nationwide wouldn't have made a difference in this case. This was because H was a registered and active company at the time Mr B made the payment and there was nothing that would have led Nationwide to believe he might be the victim of a scam.

Mr B didn't agree with the investigator's findings and asked for a review by an ombudsman, so his complaint has been passed to me to decide. He provided a lot of documentation from H including promotional material, agreements, and updates, and asked me to review the following points:

- The investigator applied the wrong threshold test for intervention by Nationwide when considering the application of the PAS Code. The threshold test is identification of a risk of harm rather than identifying an actual fraudulent transaction. Mr B made high value payments that were totally out of character so Nationwide should have recognised a scam risk.
- The investigator failed to give adequate weight to the information provided to demonstrate that H was operating a Ponzi scheme. Too much weight was given to indicators H was running a legitimate business and too little weight to the implausibility of the returns offered (which Mr B set out in detail based on information H provided in prospectuses) and the required cashflow to generate those returns. H would not see a return from a site until it was sold or refinanced but had to pay commission, interest, and bonuses in the short term. Mr B said the logical explanation was that H was using new investor funds to make payments to other investors.
- Administrators for H haven't offered any conclusions on the inter group transactions that are being investigated and certainly haven't concluded there was nothing irregular going on.
- H hasn't filed accounts since 2018. The logical inference is that auditors were unable to sign off H's accounts.
- Mr B said the purpose of the genuine business conducted by H was to give the project legitimacy and encourage investment.
- Given the high rates of return offered and the commission paid to introducers, H would have to generate huge returns which make the rates offered implausible. The logical conclusion is that investor funds were used to make payments to other investors.
- Nationwide should reimburse Mr B based on his vulnerability as he was an inexperienced investor who was vulnerable to this type of scam.
- The loss of his funds has had a huge impact on his health and finances.

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.

All the payments were made prior to the introduction of the Contingent Reimbursement Model Code (CRM Code) on 28 May 2019. The CRM Code can't be applied retrospectively, so it doesn't apply to these transactions.

In broad terms, the starting position at law is that a financial institution such as Nationwide is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), Nationwide should have been on the lookout for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) though. And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

I've considered Mr B's bank statements for the twelve month period before the transactions were made to see if they were so unusual and out of character given Mr B's usual activity that Nationwide ought reasonably to have intervened. I think the first payments to H were unusual and that Nationwide should have asked Mr B some questions about them to satisfy itself he wasn't at risk of financial harm.

I can't fairly require Nationwide to reimburse Mr B solely on the basis it didn't intervene when I think it should have. I need to go on to consider what is most likely to have happened if Nationwide had asked the kind of questions I think it should have at the time each payment was made. In deciding this point, I need to consider what was known about H at the time, rather than information that has subsequently come to light.

I'm not persuaded that Nationwide would have had any concerns or that the payment would not have been made if it had intervened. H was a legitimate company that at the time the payment was made was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest Nationwide should have been concerned that Mr B might be falling victim to a scam. Many of the concerns Mr B has raised, including high commissions paid to introducers, have come to light after the payments left Mr B's account.

Mr B even says he received the returns he expected in respect of his early short term investments. He has told this service that he doesn't think H started out as a scam but that there were problems when H expanded too quickly and because of lockdown related issues.

Nationwide ought to have asked Mr B questions to understand the nature of the payment and to ensure he had researched the investment opportunity before committing funds. But it wasn't for Nationwide to analyse in detail the documentation provided to Mr B or to provide investment advice. And I wouldn't expect Nationwide to look up H's filing history as Mr B's representative has suggested.

As Mr B's complaint pre dates the CRM Code, it is unnecessary for me to consider whether it applies and, if so, its provisions in respect of vulnerability. And I can't reasonably ask Nationwide to reimburse Mr B on the basis he was vulnerable because he was a new investor.

Overall, whilst I'm very sorry to hear about Mr B's loss and the impact it has had on him, I can't reasonably ask Nationwide to reimburse him.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 December 2024.

Jay Hadfield
Ombudsman