

## 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 offered loan notes to investors to raise money for its development projects. In February 2018 Mr B made three payments totalling £25,000 for a ten month loan note (£10,000, £10,000 and £5,000). At the end of the year Mr B received interest as expected. He reinvested the remaining funds in a seven year loan note but didn't receive further interest or the return of his capital.

H entered administration in January 2022. Mr B believes H was operating a sophisticated scam and always intended to defraud him and numerous other investors.

Mr B's legal representative sent a letter of complaint to Nationwide in November 2023 and said it breached the PAS Code when he made high value payments and it failed to intervene. He said Nationwide should have requested copies of correspondence Mr B received from H and considered the delay in H filing annual accounts.

Nationwide didn't agree to reimburse Mr B. It said he had a civil dispute with H.

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 (PAS 17271:2017). 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 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 him financially and emotionally.

### **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 am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

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 this transaction.

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 can see that Mr B made two £10,000 payments on the same day in January 2018. Given these two transactions, Mr B's payments to H don't look particularly unusual.

In any event 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 in February 2018. 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 received the returns he expected in respect of the initial investment he made with H.

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 a new investor.

Overall, whilst I'm sorry to hear about Mr B's loss, 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**