

The complaint

The estate of Mr M complains that Nationwide Building Society won't refund the money he lost when he was the victim of what it feels was a scam.

What happened

Sometime in early 2019, Mr M found out about an opportunity to invest in a property development company. It appears he understood he would be providing a loan to the company, that his investment would be used to fund the company's projects, and that he would receive an income in return. And, after deciding to invest, Mr M made a payment of £20,000 from his Nationwide account to the property development company.

Unfortunately, Mr M didn't receive the income from the investment he was told he would, and the property development company has now gone into administration. Mr M then reported the payment he had made to Nationwide as a scam and asked it to refund the money he had lost.

Nationwide investigated but said it felt this was a case where an investment had failed, rather than a case of fraud. So it didn't agree to refund the money Mr M had lost. The estate of Mr M wasn't satisfied with Nationwide's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said they didn't think the circumstances here met the definition of a scam, so they didn't think Nationwide should have to refund the money Mr M had lost. The estate of Mr M disagreed with our investigator, so the complaint has been passed to me.

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 broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Nationwide is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Mr M was the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payment was legitimate, whether the purposes he and the property development company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen, I'm satisfied Mr M made the payment here with the intention of investing with the property development company. I think he thought his funds would be used to fund projects the company was carrying out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr M didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the property development company intended a different purpose for the payment, or that Mr M's and the property development company's purposes for the payment weren't broadly aligned.

From what I've seen, the property development company completed three different development projects – in three different cities across the UK. It also worked on a number of other developments, which it then sold when it experienced financial difficulties. And I wouldn't expect a company that intended to scam investors, to complete these projects that would have involved a large amount of investment and management. So I think the completion of these projects strongly suggests the property development company was attempting to operate as a legitimate business.

I appreciate the estate of Mr M has argued that the company only completed these projects in order to provide the investment with an appearance of credibility. But, while this is possible, such an argument could be made about any work done by any company and doesn't, in of itself, provide any evidence of a scam. And, in any event, I still think more work appears to have been put into these projects than I would expect from a company that only wanted to use them as a front for a scam.

The estate of Mr M has also argued that the property development company was offering very high rates of return and paying very high commission to introducers, which made the rate of return offered on the investment very unlikely. But while this, and other irregularities or poor business practice the estate of Mr M has highlighted may suggest the property development company wasn't acting as I would expect a professional business to do, I don't think it goes far enough to show that it intended to operate a scam.

The estate of Mr M has also highlighted a number of inaccuracies or irregularities with the accounts the company has filed. But while this may suggest financial mismanagement on the part of the company, this is not the same as the intention to operate a scam and I don't think it shows that the company never intended to use investors' funds for development projects.

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 investors' 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.

So I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the property development company intended for this payment was different than the purpose Mr M intended. And so I don't think the circumstances here meet the definition of a scam, or that Nationwide has acted unreasonably in not agreeing to refund the money Mr M lost from this payment as a result.

It's possible that material new evidence may become available at a future date, which suggests that the property development company did take the payment using dishonest deception. If that happens, the estate of Mr M can ask Nationwide to reconsider its claim for this payment and, if not satisfied with its response, bring a new complaint to our service.

I recognise that my decision will come as a disappointment to the estate of Mr M, as I know he lost a significant amount of money here. But I'm not satisfied that I can fairly ask Nationwide to refund the payment based on the evidence that is currently available.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 9 May 2025.

Alan Millward
Ombudsman