

## **The complaint**

Ms J complains that Nationwide Building Society didn't do enough to protect her when she made two payments to a property investment opportunity that she now considers was a scam.

## **What happened**

Ms J made two payments from her Nationwide account towards a property development investment with 'H'. Ms J says she didn't receive any returns, and H went into administration in January 2022. She now says the investment wasn't genuine and that she is the victim of a sophisticated scam.

Ms J complained to Nationwide in December 2023, but it didn't uphold her complaint. It didn't consider she was the victim of a scam and instead said this was a genuine investment and so now a civil dispute between her and H.

Ms J was unhappy with Nationwide's response and brought a complaint to this service. Our Investigator didn't uphold her complaint as they said they hadn't seen sufficient evidence this was a scam.

Ms J maintains that her complaint should be upheld and says that Nationwide failed to comply with PAS 17271:2017 (the PAS Code) and the CRM Code. Ms J has explained why she thinks H was operating a scam and a Ponzi scheme. In particular, Ms J has referred to high commissions of as much as 35% paid to introducers and to high interest rates of up to 15% plus bonuses. So, Ms J confirmed she wanted an Ombudsman to reconsider her case.

## **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 business 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.

However, in some situations, taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), businesses such as Nationwide shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer 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 consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's Contingent Reimbursement Model ('the CRM Code'), which

Nationwide has signed up to. In this case Ms J made both payments toward her investment with H after the CRM Code came into force, one for £9,999 in February 2020 and one for £1,000 in February 2021. As her representatives argue she was scammed by H, I've considered whether this Code applies and so she is due reimbursement.

The CRM code doesn't apply to all APP payments which ultimately result in a loss for the customer. It only covers situations where the payment meets its definition of an APP scam. The relevant definition for this case would be that Ms J transferred funds to another person for what she believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Ms J's been the victim of a scam in line with this required definition. This means the CRM code doesn't apply to her payments and so Nationwide isn't required to reimburse her under it.

Our Investigator covered in detail why they considered the payment purpose Ms J had in mind, and the purpose in which the recipient had matched. I'm in agreement with them that this was the case, I'll explain why.

It's accepted Ms J's purpose for making the payment was to invest in H and for the funds to be used towards property development. And that she was persuaded at the time, through the paperwork, this was a legitimate venture. I accept that H failed to deliver what was expected from the investment, but I haven't seen any clear evidence this was always what it intended; or that at the time of the payment, it planned to use Ms J's funds in a different way to what was agreed. I haven't seen persuasive evidence that H's intention was to defraud Ms J when it took her funds.

Ultimately, the information we currently hold suggests that H was a failed investment venture, not a scam. The information provided doesn't evidence H had fraudulent intent when it took Ms J's funds, as required under the definitions within the CRM code. So I can't agree Nationwide was wrong to consider Ms J's situation a civil matter. With that in mind, I can't then say it's wrong not to have reimbursed her under the CRM code at this time, or to not consider a refund more generally within the expectations on a firm to act to protect customers who may be at risk from financial harm from fraud. Given I've concluded that the payments Ms J authorised weren't fraudulent, Nationwide's duty was not triggered here.

I appreciate Ms J is now in a position where she's lost out financially due to this investment. But I don't consider her loss is the result of any failings by Nationwide.

### **My final decision**

For the reasons set out above, I don't uphold Ms J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 20 May 2025.

Amy Osborne  
**Ombudsman**