

The complaint

Mr and Mrs H complain that Nationwide Building Society did not fully reimburse the £3,000 they say they lost to a scam.

What happened

Mr and Mrs H attended a property seminar and met an individual who was giving a talk. This individual let them know about an investment opportunity with a company I'll refer to as 'MSD'. The director of MSD was an individual I will refer to as 'HB'. MSD had plans to redevelop a plot of land into apartments for significant profit and also had planning permission from the council. After receiving a valuation report for the investment, Mr and Mrs H signed a loan agreement with MSD, to lend it £150,000 for 18 months, with an optional 6-month extension, and an expected return of 12% per annum. HB also signed a personal loan guarantee for the funds, which was witnessed by a lawyer. Mr and Mrs H transferred £150,000 from a separate bank account in November 2021.

In October 2022, Mr and Mrs H were informed by HB that he was selling the land to another developer and they were due to get their capital and returns back which totalled around £170,000. However, HB then said he had run into issues and that he would repay them in instalments, though, these payments did not materialise. Mr and Mrs H agreed to pay HB some solicitors fees to help get a 'deal over the line' for the property as he did not have the funds to pay them himself. They transferred £3,000 directly to HB's personal account on 30 January 2023, and later paid a further £2,000 to a business account via their Nationwide credit card. When Mr and Mrs H still did not receive any of their money back, they felt they had been the victim of a scam.

Mr and Mrs H raised a scam claim with Nationwide who issued a final response letter in February 2024. This explained they had assessed the £3,000 transfer under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code and having done so, they agreed they did not meet their obligations under the code. But they did not think Mr and Mrs H had a reasonable basis to believe HB was legitimate at that point, as they were aware other individuals had run into difficulty getting their investments out of him. So, Nationwide applied an exception to the full reimbursement and paid Mr and Mrs H 50% of their loss, totalling £1,500. They fully refunded the £2,000 card payment at a later date.

The complaint was referred to our service and Mr and Mrs H's representative highlighted HB had been disqualified from acting as a director for 11 years from November 2022 to December 2033. And that he had been taken to court for fraud by another investor for a separate project.

Our Investigator looked into the complaint and assessed it under the CRM Code. They issued a view explaining while HB had been barred from acting as a director, this was in relation to him fraudulently claiming loans and was not linked to any alleged fraud about the investment Mr and Mrs H made. While they acknowledged there were other complaints about HB and a criminal proceeding, these were about other developments. On balance, they did not think there was enough evidence to show this was a failed investment as opposed to intentional fraud where MSD never intended to develop on the land.

Mr and Mrs H's representatives did not agree with the findings. They felt that the balance of probabilities showed it was more likely MSD had committed fraud and felt the receiving bank information would confirm this. They also highlighted that Nationwide had provided a 50% refund, so agreed a scam had occurred.

As an informal agreement could not be reached the complaint has been passed to me for a 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.

It isn't in doubt that Mr and Mrs H authorised the payment of £3,000 to HB, and did so because they thought they were helping him pay for legal fees to close the deal on the development. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transaction. But they say that they have 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 this definition out 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.

Mr and Mrs H raised a separate complaint against a third-party bank they made the £150,000 investment from, so I won't go into detail about that payment in this decision. In summary, I do not think there is enough evidence to show MSD did not intend to develop the site at the time Mr and Mrs H invested their funds in November 2021, so I do not think the investment payment meets the definition of an APP scam.

However, I think the circumstances of this payment are different and I can see that Nationwide has assessed the £3,000 payment as an APP scam under the CRM Code. On one hand, I don't think this is unreasonable as at the point Mr and Mrs H made the £3,000 payment to HB, which was supposedly for solicitor's fees for the sale of the development, HB had been disqualified from acting as a director of a company. And MSD had commenced winding up as a company due to insolvency in March 2022.

However, I also note that there is no evidence to show HB did not attempt to sell the land to another developer and this deal fell through. We have messages between Mr and Mrs H and HB that suggest he was trying to sell the land, and I haven't seen anything else that refutes this. I can see from the receiving bank statements that the funds were sent out as soon as HB received them and while I cannot go into detail about where they went, I have seen nothing that raises suspicion that HB was acting unreasonably. So, it is difficult for me to agree that the £3,000 payment meets the definition of an APP scam as set out above.

In the interest of providing a full answer, I will also set out my findings if I did assess the

payment under the CRM Code, as Nationwide did.

The CRM Code requires a firm to reimburse victims of APP scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply. In this case, Nationwide says that Mr and Mrs H lacked a reasonable basis for believing that they were dealing with a legitimate individual for legitimate goods and/or a service when they paid HB the £3,000.

On balance, I think it was reasonable for Nationwide to rely on this exception to full reimbursement. I say this because at the point they sent HB the £3,000, there was public information showing MSD, the company they had initially invested in, had become insolvent. And there was also public information showing HB had been disqualified from being a director of a company from November 2022 onwards. So, I think it was possible for Mr and Mrs H to find out HB was not acting formally as a director of MSD any longer.

In addition to this, Mr and Mrs H had told Nationwide they got in contact again with HB in October 2022 because they had been warned other investors had faced difficulty trying to get their investment out of him. So, I think they were already on notice something had gone wrong. Finally, I can see they were instructed to make a transfer directly to HB's personal account, instead of a business account. And they were also asked to make a card payment to a business account that did not appear to be directly linked to MSD. On balance, I think they could reasonably have had concerns about the payees involved and the fact they were not paying a business account directly linked to MSD.

With all of the above in mind, I think it is fair and reasonable that Nationwide relied on the exception to full reimbursement, as I think Mr and Mrs H did not have a reasonable basis to believe they were paying a legitimate individual for a legitimate service or goods when they transferred the £3,000 directly to HB's personal account.

As I have not seen enough to be satisfied the payment of £3,000 meets the definition of an APP scam, I think the refund of £1,500 Nationwide has already paid is more than I would have recommended in the circumstances, and I don't direct them to take further action.

My final decision

I do not uphold Mr and Mrs H's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 12 May 2025.

Rebecca Norris
Ombudsman