

The complaint

Mr and Mrs P complain that Nationwide Building Society ('Nationwide') won't refund the money they lost as a result of what they believe was an 'Authorised Push Payment' ('APP') property investment scam.

Mr and Mrs P bring their complaint with the assistance of a professional representative. For ease of reading within this final decision, I will refer solely to Mr and Mrs P in the main.

What happened

The background to this complaint is well known to both parties, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

Mr and Mrs P say that they were persuaded to invest with a company, that I'll refer to as 'Company H'. Company H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mr and Mrs P say that the sale and rent of Company H's assets would later generate company income which would be used to pay investors income and capital.

Mr and Mrs P invested with Company H in August 2019, with Mrs P making two faster payments of £20,000 to Company H on 17 and 19 August 2019 from a personal account she held at another banking provider.

Mr and Mrs P then invested a further £4,000 in August 2020, paying Company H from their joint account held with Nationwide.

Company H has gone into administration. Mr and Mrs P believe the investment wasn't genuine and that they are the victim of a scam. They complained to Nationwide in September 2024 advising it should reimburse them under the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code.

Nationwide issued a final response to Mr and Mrs P on 2 October 2024, declining to reimburse their loss. In short, it considered Company H was a genuine company that went into liquidation, and the matter was therefore a civil dispute. Its letter provided referral rights to this service, so Mr and Mrs P brought their complaint to this service for an independent review.

Our investigation so far

The Investigator who considered this complaint didn't recommend that it be upheld. They said there was insufficient evidence to conclude that Company H didn't intend to provide the agreed investment or make the returns it set out – meaning they didn't consider there was sufficient evidence to conclude that the definition of an APP scam had been met. So, they didn't consider they could fairly and reasonably ask Nationwide to reimburse Mr and Mrs P under the provisions of the CRM Code for the payment they had made to Company H.

Mr and Mrs P disagree and maintain that their complaint should be upheld under the CRM Code and that Nationwide also failed to comply with PAS 17271:2017 (the PAS Code). And they have also explained why they think Company H was operating a scam and a Ponzi scheme. In particular, Mr and Mrs P have referred to high commissions of as much as 35% paid to introducers and to high interest rates offered as guaranteed returns.

As Mr and Mrs P didn't accept the Investigator's opinion, the complaint has been passed to me for a final 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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

Mr and Mrs P's representative has made detailed submissions in support of their complaint. I would like to assure Mr and Mrs P and their representative that I've read and considered everything that has been sent in. However, I don't intend to respond in similar detail. I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is whether Nationwide acted fairly in its answering of the complaint that the matter is a civil dispute, and it is therefore not liable to reimburse Mr and Mrs P under the provisions of the CRM Code. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In broad terms, the starting position at law is that a bank 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 CRM Code, which Nationwide was signed up to and in force at the time Mr and Mrs P made payment toward the investment with Company H. As Mr and Mrs P's representative argues they were scammed by Company H, I've considered whether the CRM Code applies and if they are due any reimbursement as a result.

The CRM Code didn't apply to all APP payments which ultimately resulted in a loss for the customer. It only covered situations where the payment met its definition of an APP scam. The relevant definition for this case would be that Mr and Mrs P transferred funds to another person for what they believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mr and Mrs P have been the victims of a scam in line with this required definition. This means the CRM Code doesn't apply to their payment and so Nationwide isn't required to reimburse them under it.

Our Investigator covered in detail why they considered the payment purpose Mr and Mrs P 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 Mr and Mrs P's purpose for making the payment was to invest in Company H and for the funds to be used towards property development. And that they were persuaded at the time, through the paperwork, this was a legitimate venture. I accept that Company 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 Mr and Mrs P's funds in a different way to what was agreed. I haven't seen persuasive evidence that Company H's intention was to defraud Mr and Mrs P when it took their funds.

The key information to this case is:

- Company H completed three different development projects. Company H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

I'm also not persuaded Company H completed these developments to draw in investors. No persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Mr and Mrs P's representative are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring their claim within the scope of the CRM Code. Whilst Company H may have, for example, misrepresented certain information, failed to cooperate with administrators, not filed accounts and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that Company H intended to use Mr and Mrs P's funds for a different purpose.

Mr and Mrs P's representative have provided a significant amount of additional paperwork from several sources that it says evidence Company H was operating a scam. But as our service has explained to it on a number of cases already, while the information provided does indicate there may have been some poor business practices and/or financial management in some areas of Company H, this isn't enough to say it was operating a scam.

We haven't seen evidence that Mr and Mrs P's funds weren't used for the intended purpose or that Company H took them with fraudulent intent.

Ultimately, the information we currently hold suggests that Company H was a failed investment venture, not a scam. The information provided doesn't evidence Company H had fraudulent intent when it took Mr and Mrs P's funds, as required under the definitions within the CRM Code. So I can't agree Nationwide was wrong to consider Mr and Mrs P's situation a civil matter.

This also means I'm unable to ask Nationwide to reimburse Mr and Mrs P on the basis that Mrs P was vulnerable at the time the payments were made, as their representative has alleged. When the CRM Code applies, a customer can be reimbursed if they are vulnerable even when an exception to reimbursement applies. But as that's not the case here and the CRM Code doesn't apply, I won't be asking Nationwide to reimburse Mr and Mrs P.

If material new evidence comes to light at a later date, Mr and Mrs P can ask Nationwide to reconsider their fraud claim under the CRM Code.

I've also gone on to think about whether Nationwide should be held responsible for Mr and Mrs P's loss for any other reason.

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 look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). 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.

With the payment Mr and Mrs P made, I'm not persuaded that Nationwide would have had any concerns. Company H was a legitimate company operating at the time the payments were made and 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 and Mrs P might be falling victim to a scam. Many of the points / concerns about some aspects of Company H that have been raised, have come to light after detailed analysis years after Mr and Mrs P made the payment.

I'm really sorry to disappoint Mr and Mrs P, as I know they have lost a significant amount of money overall. But I'm not satisfied that I can fairly ask Nationwide to refund them under the provisions of the CRM Code based on the evidence that is currently available. And I'm not satisfied Nationwide would have been on notice that Mr and Mrs P were potentially at risk of financial harm from fraud at the time they made the payment – so therefore it couldn't have prevented their loss either. Overall, I don't consider Mr and Mrs P's loss is the result of any failings by Nationwide.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 5 December 2025.

Matthew Horner
Ombudsman