

The complaint

Mr and Mrs C complain that Nationwide Building Society ('Nationwide') won't refund the money they lost when they say they fell victim to an 'Authorised Push Payment' ('APP') investment scam.

Mr and Mrs C bring their complaint with the assistance of professional representation, but for readability, in this final decision, I will refer solely to Mr and Mrs C.

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 C say that they were persuaded to invest with a company I'll refer to as 'Company H' in my decision. 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 C say that sale and rent of Company H's assets would later generate company income which would be used to pay investors income and capital.

In September 2019 Mr and Mrs C made a payment of £10,000 from their joint account with Nationwide to Company H. Mr and Mrs C had also made a further payment of £10,000 from an account they held at another banking provider in March 2020. Mr and Mrs C's complaint about that payment is being dealt with by our service under a separate complaint reference.

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

Nationwide issued a final response declining to reimburse Mr and Mrs C. It advised it didn't consider it had done anything wrong or agree it was a scam and instead was a private civil dispute between the parties, as Company H was a genuine company that went into liquidation. Nationwide directed Mr and Mrs C to the administrators of Company H.

Mr and Mrs C, unhappy with the response from Nationwide, brought their complaint to this service. Through their representative, they provided detailed evidence to support their contention they are the victims of a scam.

Our investigation so far

The Investigator who considered this complaint didn't recommend that it be upheld. She 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 she didn't consider there was sufficient evidence to conclude that the definition of an APP scam had been met. This meant that she couldn't ask Nationwide to consider Mr and Mrs C's complaint under the CRM Code.

Mr and Mrs C didn't agree with the Investigator's findings, so their complaint has been passed to me to decide. The overarching, and main point made, was that Company H (and its subsidiaries) were operating a very sophisticated scam. Mr and Mrs C's response was lengthy, so I have summarised what I consider to be their main points, although I would like to assure Mr and Mrs C that I have carefully considered everything they have said and provided.

In summary, Mr and Mrs C say:

- By August 2009 the director who was the face of Company H was declared bankrupt following a petition for bankruptcy filed against him. His new venture in Company H followed the demise of other companies he was a director of leaving money owed to creditors. This director was declared bankrupt for the second time in 2023. Information was also provided in relation to other directors of subsidiaries of Company H.
- High commissions paid to introducers weren't disclosed to investors.
- Company H raised £123 million from investors but only spent £38 million on property acquisitions. Mr and Mrs C says the remaining funds weren't used for their intended purpose.
- Company H engaged in fraudulent financial activities, such as registering illegitimate charges against properties. In doing so, Company H has breached a duty under the Land Registration Act 2002 and committed a criminal offence.
- At least six companies relating to Company H took out 'bounce back loans'. One such loan was deposited into the personal account of a director of Company H
- Company accounts were inflated.
- Numerous companies connected to Company H failed to file accounts with Companies House for many years with the aim of obscuring their true financial position. And accounts that were filed showed fanciful figures.
- Projects which were said to be profitable, in fact incurred losses.
- Company H said it failed because of the pandemic but evidence shows Company H had defaulted on loan payments before it, and the collapse was more likely related to regulatory changes including the FCA's mini bond ban which affected Company H's ability to raise new investments.
- At least 48 companies were transferred out of the Company H prior to liquidation in a deliberate attempt to shelter assets from creditors.
- Directors of Company H haven't cooperated with the insolvency practitioners of Company H and subsidiary companies because they are hiding information which would show they were operating a Ponzi scheme.
- The structure and methods used by Company H closely mirrored other known scams and directors of Company H have links with others who have operated such schemes.
- Ponzi schemes often engage in genuine activity early on to build credibility.

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.

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. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mr and Mrs C's claim falls within the scope of the CRM Code, which defines an APP scam as:

"...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."*

It is for Mr and Mrs C to demonstrate that they are the victims of an APP scam.

To decide whether Mr and Mrs C are the victims of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr and Mrs C thought this purpose was legitimate.
- The purpose the recipient (Company H) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs C understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr and Mrs C thought they were investing in a property development company. I haven't seen anything to suggest that they didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose Company H had in mind, I've considered the wider circumstances surrounding Company H and any linked businesses.

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 appreciate that Mr and Mrs C believe Company H completed these developments to draw in investors. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Mr and Mrs C 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 C's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose Company H had in mind when it took payments from Mr and Mrs C was different to theirs. So, I consider Nationwide acted fairly in not considering Mr and Mrs C's complaint under the CRM Code.

If material new evidence comes to light at a later date, Mr and Mrs C can ask Nationwide to reconsider their fraud claim.

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

While £10,000 is a significant amount, I'm not persuaded that Nationwide would have had any concerns about the payment Mr and Mrs C made. Company H was a legitimate company and 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 and Mrs C might be falling victim to a scam. Many of the points raised by Mr and Mrs C have come to light after detailed analysis years after they made the payments.

I'm really sorry to disappoint Mr and Mrs C, as I know they have lost a significant amount of money. But I'm not satisfied that I can fairly ask Nationwide to refund them based on the evidence that is currently available.

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 C and Mrs C to accept or reject my decision before 1 May 2025.

Matthew Horner

Ombudsman