

## **The complaint**

Mrs and Mr W complain that the Nationwide Building Society ('Nationwide') won't refund payments they made as part of a scam.

## **What happened**

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

Mrs W was looking to get into property investment. She joined a property investment page on a social media site and received an offer for mentorship from a third party, further referred to as G. Mrs W paid £11,000 for a course whereby G would mentor her and met with him on a monthly basis.

After the course finished, G reached out to Mrs W and offered her an investment opportunity as part of providing finance for a property. Mrs W was offered monthly returns of 1.5% over three months from a £90,000 investment. Mrs W made the payments, as directed by G, to a company (who I'll refer to as T) which he was the director of.

Since making the payments, Mrs W has been advised that the sale of the property hasn't gone through for a variety of reasons and she hasn't received a full return of her funds. Fearing she'd fallen victim to a scam, Mrs W contacted Nationwide to make them aware of the issue. As part of this complaint, Mrs W and her representatives alleged that G had conspired to defraud her with a third party, H.

Nationwide investigated the matter but deemed it to be a civil dispute rather than a scam and, on that basis, declined to refund Mrs W's funds. Unhappy with this response, Mrs W referred her complaint to our service.

An investigator looked into Mrs W's complaint but didn't uphold it. The investigator said that they didn't think there was sufficient evidence to demonstrate Mrs W had fallen victim to a scam and Nationwide weren't liable to refund her.

Mrs W and her representatives disagreed with the investigator's findings and supplied further evidence and arguments, including the following:

- H never bought the land which formed part of the agreement.
- H had committed bounce back loan (BBL) fraud and had fabricated invoices and other documents to falsely claim VAT.
- Mrs W was vulnerable at the time.
- They referenced other cases that had been brought to our service which related to alleged fraudulent activities carried out by G and H.

As the complaint couldn't be resolved by the investigator it has been passed to me for a final decision.

Having reviewed the case, I reached the same overall answer as the investigator, but for different reasoning. So, I issued a provisional decision and gave both parties the chance to provide any further evidence they wanted considered before I issued a final decision.

### **My provisional decision**

In my provisional decision I said:

Mrs and Mr W and their representatives have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mrs W's complaint. This is not meant to be a discourtesy to Mrs and Mr W and I want to assure them I have considered everything they've submitted carefully.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position at law is that a bank 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.

Nationwide are a signatory of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code which requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams in all but a limited number of circumstances.

But, the CRM Code does not apply to private civil disputes, for example where a customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *"another person for what they believed were legitimate purposes but which were in fact fraudulent."*

Much of the evidence provided by Mrs and Mr W and their representatives pertains to H's history of committing fraud as well as evidence that he's committed fraud in relation to this property. Mrs and Mr W and their representatives then go on to claim that G colluded with H in order to defraud her of her funds.

Mrs and Mr W's representatives supplied our service with a call recording in which she had a conversation with G. During this call, Mrs W makes a number of allegations against G, who repeatedly disputes his involvement with H and any such fraudulent activity they may have been involved in.

Given the limitations on our service, we're unable to cross-examine witnesses and their testimony. In this case, G's actions lie at the centre of Mrs and Mr W's complaint and his testimony would be key in determining whether he has sought to defraud Mrs W. Without further testimony from G, and the fact that he disputes knowledge of H carrying out any

fraudulent activity, it's difficult for me to agree that G did have any knowledge of any potentially fraudulent activity carried out by H.

I should also state that a lack of other key pieces of evidence make it difficult for me to be satisfied that there was any collusion between G and H. For example, I've seen no evidence to show who did, or didn't, own the property. I understand that Mrs W and her representatives have demonstrated who now owns the freehold for the property and when this was sold. But, this doesn't demonstrate that neither G or H owned the leasehold. This is important as it is usually the leasehold of a property which would allow investors to develop, or redevelop, the property itself.

I understand that Mrs W feels as though she's been lied to by G in relation to why the property hadn't been sold. There can be many reasons as to why the sale of a property may fall through. But, without having testimony from the parties directly involved in the sale, I'm unable to say whether Mrs W has been lied to in relation to this.

I also find Mr and Mrs W's claim that the failure of G and H to properly register security for her over the property to be unpersuasive proof that she'd been scammed. Firstly, the contract between Mrs W and T (the special purpose vehicle Mrs W was contracted with and paid as part of this investment) doesn't state that she would be given security or a fixed charge over the specific property. Instead, it confirms that the loan would be secured by a personal guarantee over the Borrower's (T's) assets.

I've also not been provided with any evidence of the representations made prior to the agreement by G. Given that the loan agreement Mrs W has doesn't reference security in the way explained and complained about, it's difficult for me to say that G made any misrepresentations in respect to this.

Taking all the above into account, I'm not persuaded based on all the available evidence that G, or T, deliberately set out to defraud Mrs and Mr W of their funds – or took the funds with a different purpose in mind. As that's the case, I don't believe that Nationwide are liable to refund Mrs and Mr W under the CRM Code as I don't find that Mrs and Mr W have been the victims of an APP scam.

Mrs and Mr W and their representatives have stated that the evidence of H committing various offences in relation to a limited company they were a director of shows a history of them carrying out fraudulent activity. Though these offences may demonstrate poor, or potentially illegal, behaviour on H's part, they don't prove that they'd acted fraudulently in relation to this matter. And, as stated above, I need to be satisfied that G has acted fraudulently in this matter – so evidence of H carrying out fraudulent activities for businesses in his own name doesn't sufficiently demonstrate this.

As I'm not satisfied that Mrs W's payments are covered by the CRM Code, I can't consider or apply vulnerability as set out under the Code. Further to this, as I can't see that Nationwide were aware of any potential vulnerability at the time of the payments, I can't say that they failed in their duty of care to Mrs W with regards to her potential vulnerabilities.

Though I've not seen that a detailed discussion did take place between Nationwide and Mrs W and Mr W at the time of the payments, I think it's unlikely that any detailed discussions between Nationwide and Mrs and Mr W would've prevented the payments from taking place and stopped them ultimately incurring a loss. I say this as I don't think that the answers Mrs and Mr W would've given to any questions asked by Nationwide would've suggested that they might at risk of financial harm.

Overall, I'm not persuaded that Mrs and Mr W have fallen victim to a scam, based on the evidence available. Should any material new evidence come to light at a later date that would suggest that Mrs and Mr W were victims of a scam then I would suggest they contact Nationwide to make them aware of any new evidence.

### **My provisional decision**

My provisional decision was that I didn't intend to uphold this complaint against Nationwide Building Society.

### **Responses to my provisional decision**

Mrs and Mr W's representatives responded to say they didn't accept my provisional decision and supplied further evidence and arguments, including the following:

- The payment meets the definition of an APP scam as H was defrauding people before, and at the time of, the payment.
- H had sold the lease of the property by the time Mrs and Mr W made the payment.
- G was a long-time associate of H and provided false updates to Mrs and Mr W for almost two years.

Nationwide responded to say they were happy with my provisional decision and had nothing further to add. As responses have been received by both parties, I've proceeded with issuing 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.

Having considered the additional testimony and evidence provided by Mrs and Mr W's representatives, I see no reason to reach a different answer than I did in my provisional decision.

As referenced in my provisional decision, I wasn't persuaded that G had acted fraudulently or had scammed Mrs and Mr W. The additional information and evidence relating to H's conduct hasn't altered my position in respect of whether G had set out to defraud Mrs and Mr W.

With regards to G's conduct, I don't believe that his association with H for a long period of time is persuasive evidence that he was aware of, or complicit with, any potential illegal or fraudulent activity being carried out by H. Further, though G may have given Mrs and Mr W incorrect updates, this doesn't demonstrate that he had set out to defraud them at the time of the payments.

Overall, the complaint points put forward by Mrs and Mr W's representatives don't persuade me to reach a different answer. I don't think that the evidence demonstrates that Mrs and Mr W are victims of an APP scam as defined by the CRM Code.

### **My final decision**

My final decision is that I do not uphold this complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W

to accept or reject my decision before 6 May 2025.

Billy Wyatt  
**Ombudsman**