

The complaint

Mr H complains that Nationwide Building Society won't reimburse him, after he made a payment towards an investment that he now considers to have been a scam.

What happened

Mr H has explained that he previously had dealings with a firm that I'll refer to as 'P' for an investment made in 2019, which he's explained paid out for the first 23 months. He was then approached by P with another opportunity to invest in the same industry. Mr H has said the opportunity presented was to help fund the purchase of a recycling machine. Mr H explains he was asked to fund £90,000 towards the purchase cost. He says he was told that profits gained from the operation of the machine would be split between P and investors.

On this basis, Mr H agreed to make the requested payment. While some payments were made in cash, £50,000 of this was funded via a CHAPS payment from Mr H's Nationwide account in September 2020.

In September 2023, Mr H found out that one of P's partners had sadly passed away and P has since gone into liquidation. Since P's accounts have been reviewed, a contract has been uncovered between P and another firm relating to the machinery that Mr H believed he had purchased, showing there was a finance agreement created with another firm and this firm therefore has ownership of the item.

Mr H has also raised other elements of P's business behaviour as evidence that it was a fraudulent company. These include that the machinery he purchased cost less than what was asked for by investors and that the owners of P were living comfortable lifestyles before the business' liquidation.

On this basis, Mr H believed he had fallen victim to a scam and raised a claim with Nationwide. Nationwide considered his claim but didn't reimburse Mr H. It said it considered this was a civil dispute between P and Mr H.

Mr H remained unhappy and referred his complaint to our service. An investigator considered the complaint but didn't uphold it. He also considered this was a civil dispute. He said P had been a registered firm for a number of years before Mr H made the alleged scam payment, that Mr H had confirmed himself that the machinery in question did exist and that the payment Mr H made to P was therefore broadly in line with the agreement in place. He also explained that having reviewed P's bank account that received Mr H's funds, it supported that P was carrying out activity in line with the business it claimed to be operating within.

Mr H disagreed with the investigator's opinion. He didn't consider that a business being registered proved it was not being used fraudulently. He also said there are a number of other individuals that have stated they are also victims of P's partner and that he was involved in fraudulent filings to claim money from the Government in the recycling sector.

As Mr H disagreed with the investigator's view, the complaint has been referred 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.

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 focused on what I think is the heart of the matter here. 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 firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, where the customer 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 customer even though they authorised the payment.

Nationwide is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an APP scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, it doesn't cover a genuine investment or a genuine business that subsequently failed.

Therefore, in order to determine whether Mr H has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose he intended for the payment was legitimate, whether the purposes he and P intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of P.

One of the key issues here in determining whether a scam has taken place is that Mr H has been unable to provide any documentation of the agreement he had with P – he has only been able to provide a copy of the agreement P had with the company it bought the machinery from and a spreadsheet of expected returns. Therefore, I have no evidence to indicate where or how Mr H's money should be utilised. Therefore, in essence, there is no concrete agreement I can refer to when concluding that the actions P took with Mr H's money *didn't* align with what was agreed.

Mr H has said he's seen a copy of the finance agreement P had with another firm, leasing the machine in question, but hasn't been able to provide us with a copy of this. Even if I was

able to see this, this still doesn't overcome the issue that I can't conclude with any certainty that this wasn't part of the agreement P had with Mr H – I have nothing concrete to really link his payment to the machinery at all. And while I don't dispute this point, based on Mr H's testimony, it therefore becomes difficult to determine that P didn't utilise funds in the way it agreed with Mr H, when I have no evidence of what was agreed.

In cases where there's a clear agreement between parties on how money is to be invested, it's somewhat simpler to review what *did* happen to those funds and conclude whether the intended payment purpose was met, but as this didn't happen here, it's difficult to determine - even with the benefit of hindsight and reviewing beneficiary statements – that funds were illegitimately moved on in a way that proves P's intention was to never return funds as agreed to Mr H.

I appreciate Mr H's point that other individuals have also claimed P's partner has committed fraud or wrongdoing, and that there were fraudulent filings to the Government - but I have to look at the available evidence. In this case I understand the Police have not taken the matter further and I've seen nothing untoward from researching P online. Additionally, having contacted the bank that received Mr H's funds, while I can't disclose specific information due to data protection, I can confirm that no other scam claims have been raised on the account and the receiving bank had no concerns regarding the account activity, in comparison with the purpose of the account.

I also appreciate Mr H's point that businesses can be registered on Companies House and still be fraudulent – I agree with Mr H on this point. It is however an additional point we consider when deciding the likely legitimacy of a firm, particularly when the firm has been operating for some years, as was the case here, and filing accounts. This still isn't firm evidence that a company isn't fraudulent, but it does help to build a picture on what is most likely. Similarly, while the existence of the machinery in question can't *prove* this wasn't a scam, it all strengthens the notion that there are other possibilities here, other than fraud, for why Mr H may not have received funds back from P.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as P) can fail or be mismanaged such that contracts are breached and agreed returns aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

Unfortunately, it's not possible to know with certainty what P's intentions were when Mr H made his payment to it – but before I can consider whether Nationwide is liable for any of Mr H's losses, I'd first need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mr H and P. That also means being able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of P breaching its legitimate contract with Mr H through financial mismanagement or other reasons.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that P set out to defraud Mr H with criminal intent. That is a high bar to meet. Ultimately, without clearer evidence of how Mr H's money *ought* to have been utilised, it becomes difficult to determine that P deceived Mr H with intent from the outset for actions it subsequently took. And the other available evidence surrounding this complaint, such as P having been an established business, the existence of the machinery and previous investments with P do not strengthen Mr H's allegation that this was a scam.

I appreciate how frustrating and disappointing this answer will be. Mr H has lost a lot of money as a result of this investment. But I can't exclude the possibility that P entered the

agreement in good faith, intending to fulfil the contract and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude, when weighing up these alternative possibilities, that it's more likely P intended to steal his money from the outset and never had any intent of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Nationwide responsible for the loss suffered here by Mr H. I can't fairly tell Nationwide to pay him the money he's lost, because I don't think it has treated him unfairly or was otherwise at fault here. This also means I can't fairly comment on whether Nationwide ought to have intervened further when Mr H made the payment to P, as I haven't ultimately determined that it was a scam payment.

My final decision

My final decision is that I don't uphold Mr H's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 April 2025.

Kirsty Upton
Ombudsman