

## The complaint

Mr and Mrs P complain that Nationwide Building Society ('Nationwide') won't refund the money they lost when they fell victim to a scam.

## What happened

Mr and Mrs P's complaint has been brought by a professional representative. As the payments were made from a joint account, I'll refer to Mr and Mrs P in this decision.

Mr and Mrs P say that in around 2012 they heard an advert about a company I'll refer to as B in this decision on the radio. Years later, when they were looking to invest some funds, Mr and Mrs P researched B and decided to invest. Mr and Mrs P were told that for every £14,000 they invested a car would be bought on their behalf and leased out by a connected company (R). They would receive monthly returns, a final gross payment at the end of the term and security over the car.

I have set out in the table below the payments Mr and Mrs P made to B.

<b>Date</b>	<b>Amount</b>
22/01/20	£10,000
22/01/20	£10,000
22/01/20	£8,000
25/06/20	£10,000
25/06/20	£10,000
25/06/20	£a10,000
25/06/20	£10,000
25/06/20	£2,000
<b>Total</b>	<b>£70,000</b>

Between February 2020 and January 2021 Mr and Mrs P received payments from B totalling £12,031.20. No further payments were received after this date, so Mr and Mrs P's total loss is £57,968.80.

In July 2023 Mr and Mrs P complained to Nationwide through their representative. They said Nationwide failed to protect them at the time they made the payments to B and they should be reimbursed under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).

Nationwide didn't agree to reimburse Mr and Mrs P's loss. It said they paid a legitimate company that went into administration and concluded Mr and Mrs P had a civil dispute with B. Nationwide noted that Mr and Mrs P had referred to an investigation by the Serious Fraud Office (SFO) and invited them to get in touch again when the outcome was known.

Mr and Mrs P were unhappy with Nationwide's response and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint recommended that it be upheld. He said that the CRM Code required Nationwide to provide an outcome within 15 days of the completion of the Serious Fraud Office investigation on 19 January 2024 but had not done so. The investigator went on to explain why he felt Mr and Mrs P's complaint was covered by the CRM Code - and recommended that Nationwide reimburse them in full. On top of this, the investigator said that Nationwide should add interest at the rate of 8% simple per year from 15 days after 19 January 2024 to the date of settlement. Finally, the investigator said it would be fair for Nationwide to ask Mr and Mrs P to sign an indemnity confirming they will return any funds that may later be recovered in the administration process.

Mr and Mrs P broadly accepted the investigator's recommendations but raised the following points:

- Nationwide should pay interest from the date it declined Mr and Mrs P's claim rather than 15 days after 19 January 2024. Mr and Mrs P said that Nationwide should have recognised their claim was covered by the CRM Code when the FCA report came out on 19 February 2021.
- There is overwhelming and irrefutable evidence of fraud and the SFO has made charges. It would be unreasonable to delay the outcome further.

Nationwide didn't agree with the investigator's view. I have summarised the main points Nationwide made below:

- There is no confirmed date of fraud, and this service needs to wait for the outcome of the SFO investigation. Whilst directors have been charged, this does not mean they will be convicted.
- Whilst the administrator's report says there were less vehicles than investors, it also states that not all loan agreements were entered into with specific vehicle security, so the differential between the number of vehicles and investors is not determinative of fraud.

### **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.

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 an authorised push payment (APP) scam, as set out in it, is met. I will discuss this later in my decision.

#### Can Nationwide delay its decision under the CRM Code?

Nationwide says that the decision as to whether Mr and Mrs P's claim meets the CRM Code definition of an APP scam should be delayed until the SFO investigation has been

completed. In saying this, Nationwide has relied on R(3)(1)(c) and (d) of the CRM Code which says:

*(c) If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.*

*(d) If the Firm relies on (c), it should make a decision no later than 15 business days after the outcome of an investigation is known. After invoking (c), the Firm should not further invoke (a).*

The above provisions only apply when a firm hasn't made a decision about whether to reimburse a customer. In this case, Nationwide issued a final response letter to Mr and Mrs P on 19 July 2023 in which it said it couldn't agree they were the victims of a scam. In the circumstances, I'm satisfied Nationwide can't rely on the above provisions. In any event, the Serious Fraud Office investigation Nationwide has referred to concluded on 19 January 2024 when it published the outcome of the investigation on its website. So, if Nationwide hadn't already made a decision not to reimburse Mr and Mrs P, the CRM Code required it to do so within 15 business days of 19 January 2024.

The Lending Standards Board has also confirmed that the code does not require a criminal test to have been completed, or require a firm to prove the intent of a third party, before a reimbursement decision can be made.

Overall, I see no reason to delay my decision until after the trial of the directors of B and don't consider it would be fair or reasonable to do so.

#### Is the CRM Code definition of an APP scam met?

I have considered whether Mr and Mrs P'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) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

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

- The purpose of the payments and whether Mr and Mrs P thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs P 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.

From the evidence I have seen I'm satisfied Mr and Mrs P intended to invest in B. They understood that B would use the funds they paid to buy cars that would be leased, and they would receive returns on their investment. I haven't seen anything to suggest that Mr and Mrs P didn't consider this to be a legitimate purpose.

I've gone on to consider the purpose B had in mind at the time it took the payments. After careful consideration, I'm not satisfied B intended to act in line with the purpose agreed with Mr and Mrs P and will explain why.

In its first supervisory notice in respect of R in February 2021 the FCA noted that R said it had entered into approximately 1,200 leases in the period January 2018 to January 2021,

but only 69 charges had been registered. I'm mindful of Nationwide's comment in respect of this differential. But this isn't the only point I've considered.

In the same notice the FCA said it had conducted a sampling of R's leaseholder list against the DVLA database and identified various discrepancies between its business model and vehicle inventory. The FCA report referred to the fact that 55 cars appeared to be second hand (although its business model relied to a large extent on securing heavy discounts on new vehicles), to vehicles that couldn't be found, and to leases entered into at a date significantly before the vehicle was put on the road. The FCA also concluded that the group's liabilities significantly exceeded its assets, and its business model was fundamentally unsustainable.

I have also seen evidence from an SFO news release dated 19 January 2024 which confirms that two directors of B had been charged in relation to the car lease scheme. The news release noted that directors were accused of providing those who signed up with false information, encouraging people to pay in with false information whilst knowing that investments weren't backed up by the cars they had been promised.

The SFO also noted that the investment was backed by a tangible asset – a car. In Mr and Mrs P's case the "Vehicle Funding Form" they were provided with when they made each set of payments didn't specify a particular vehicle but did refer to the number of units being funded. The evidence I have referred to above shows this aspect of the investment wasn't being performed.

A report by the administrators of one of the connected companies said that the total number of loan agreements relating to 834 investors was 3,609. But the number of vehicles held by the company at the time it went into administration was 596, equating to less than one car for every six loan agreements.

Overall, I'm satisfied B didn't provide the investment it offered to Mr and Mrs P and didn't follow its business model. The purpose B intended when it took Mr and Mrs P's funds wasn't aligned with theirs. Given the information provided by the SFO in respect of what the directors of B are accused of, I'm persuaded that the purposes each party had in mind for the payments weren't aligned as a result of dishonest deception. This means that I'm satisfied the CRM Code definition of an APP scam has been met.

#### Should Mr and Mrs P be reimbursed under the CRM Code?

Nationwide is a signatory to the CRM Code which requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set out in it. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Nationwide to establish that an exception to reimbursement applies. Here, Nationwide hasn't considered Mr and Mrs P's complaint under the code and didn't respond to any points made by the investigator in respect of its application. So, it hasn't demonstrated that any of the listed exceptions can fairly be applied.

For the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions can be fairly applied. Mr P says he first heard about B in around 2012 when it first started to operate. He decided to invest years later when B was well established, and

others had received returns. Mr P was provided with a Vehicle Funding Form that looked legitimate, the rate of return didn't appear to be too good to be true and Mr and Mrs P paid B. So I don't think there was anything that ought reasonably to have caused them concern at the time of making the payments.

Nationwide hasn't provided any warnings so hasn't demonstrated that Mr and Mrs P ignored an effective warning.

I've also thought about whether there is any other reason why Nationwide should reimburse Mr and Mrs P. But even if I conclude that Nationwide ought reasonably to have intervened and asked Mr and Mrs P probing questions about the nature of the payments and provided scam advice, I don't consider the scam would have been uncovered and their loss prevented. I say this because I don't think there was enough information available at the time that would have led Nationwide to be concerned that Mr and Mrs P were at risk of financial harm.

Mr and Mrs P have advised that they received returns which total £12,031.20 (but I have not seen any evidence of this). Any returns they received should be deducted from the amount Nationwide should reimburse.

### Interest

I'm not persuaded Nationwide acted unreasonably in not upholding Mr and Mrs P's claim when it was first reported in July 2023. At the conclusion of the SFO investigation though I consider Nationwide should have assessed all the available evidence and made a decision within 15 business days of 19 January 2024. So Nationwide should pay interest at the rate of 8% simple from 15 business days after the SFO published its outcome on 19 January 2024.

It is open to Nationwide to ask Mr and Mrs P to sign an indemnity confirming that they will return any funds recovered through the administrators of B (and associated companies) if it wishes to do so. This is a separate matter between Mr and Mrs P and Nationwide.

### **Putting things right**

Overall, I'm not satisfied Nationwide treated Mr and Mrs P fairly. It should put things right by making the payments set out below.

### **My final decision**

I uphold this complaint and require Nationwide Building Society to:

- Refund Mr and Mrs P's full outstanding loss after deducting the payments they received; and
- Pay interest on the above amount at the rate of 8% simple per year from 15 business days after 19 January 2024 to the date of settlement, less tax if legally deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 21 August 2024.

Jay Hadfield  
**Ombudsman**