

The complaint

Mr G complains that Nationwide Building Society hasn't refunded him after he fell victim to a scam.

What happened

The background to this complaint is well-known to both parties and so I'll only provide a summary of key events here.

Mr G was contacted by an investment broker in July 2020. This broker introduced him to an investment opportunity with a company I'll call S. It was offering an ISA wrapped bond with a 9% return on investment.

After being contacted by S, with his contact information having been passed on, and the full details being explained – complete with the provision of an investment brochure – Mr G decided to invest. He sent £5,000 at S' instruction. The money was sent to an intermediary business that was FCA regulated. And Mr G's investment was then passed from the intermediary to S.

Although all appeared genuine at the time, things started to go wrong with S. There were supposed buyouts, a lack of communication, and ultimately the scheme collapsed.

Mr G told Nationwide what had happened, seeking a refund of his loss. It considered the claim but told Mr G it wouldn't refund him. That was on the basis it believed Mr G hadn't been scammed, but instead had a civil dispute with S as a result of a failed investment.

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 done so, I'm upholding it. I'll explain why.

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

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes, and best practice standards, 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 Lending Standards Board's Contingent Reimbursement Model ('the CRM Code'), which

Nationwide has signed up to.

The CRM Code provides additional protection from APP scams, but only in certain circumstances. For example, the CRM Code only applies where the characteristics of the victim's payment meets the CRM Code's definition of an APP scam.

Is this a scam as per the CRM Code?

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."*

In order for this to apply, there are a number of requirements of which we'd need to be satisfied as well as information we'd need confirmation of. Firstly, we need to consider the purpose of the payment and whether Mr G thought this purpose was legitimate.

We then need to consider the purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Mr G understood to be the purpose of the payment.

Lastly, if we determine that there was a significant difference in these purposes, we'd need to be satisfied that the purposes were substantially different as a result of dishonest deception.

What was the purpose of the payment? Did Mr G think this was legitimate?

From what we know, Mr G was making the payment to S in return for a fixed rate bond to be invested in property development. I can't see anything which would suggest that Mr G didn't think this was legitimate.

What was the purpose the recipient had in mind? Was that in line with what the consumer thought?

When looking at the purpose question here, I've taken account of the wider circumstances surrounding the business and its director links and other businesses. After reviewing all the available evidence on cases linked to S (and the linked businesses) these are the key findings:

- The director of S and the linked businesses has been disqualified as a director on Companies House for eight years by the secretary of state.
- The director has failed to provide liquidators with accounting records for liquidated businesses and has said he will not be providing these.
- The FCA issued a warning about the linked businesses in March 2020 saying they were providing financial services without authorisation.
- Despite saying S had assets of £34m, it never filed any accounts and wasn't independently audited at any point. There was a further company that took over S which also never filed any accounts, and the director was the same person. This company contacted investors to say their money would be safe despite the FCA regulated intermediary going into liquidation, and then it cut contact with all investors.
- Police Scotland are now investigating the director, S, and other linked companies.

- In some instances, S' brochures claimed to have agreements in place with Edinburgh City Council to lease local authority properties – ECC have now confirmed to our service that it had no record of any such contract or agreement with S or the director.
- There is no evidence to suggest S or the linked companies were operating legitimately. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The Insolvency Service has also made comments following its investigation into S and the linked companies confirming investors were routinely deceived.

Ultimately there's no evidence which demonstrates that victim's funds were used in the manner agreed or prescribed by the businesses.

It's worth noting here that the payments made by Mr G did go via an intermediary, a then FCA regulated firm. Nationwide has previously argued that this means the CRM Code doesn't apply, as the transactions were between Mr G and the intermediary, rather than him and S. But I'm satisfied the payment journey here doesn't mean the CRM Code doesn't apply. Rather than setting out all the detail here, it makes sense to refer Nationwide to the published decision under reference DRN-4053598 (<https://www.financial-ombudsman.org.uk/decision/DRN-4053598.pdf>). Nationwide will see the circumstances are almost a mirror image of Mr G's and the resulting findings are the same. It has also already been provided with a copy of this decision.

Nationwide has requested the specific timings of when Mr G's payment moved from the intermediary to S. But I don't find it's necessary to go into such granular detail. S confirmed receipt of Mr G's funds within four days of them being sent. This supports there was a pre-existing relationship for funds to be moved through the intermediary and that there was no involvement by Mr G. And it confirms that those funds were moved through quickly. Furthermore, this service has considered a large volume of complaints involving S, and so have been able to satisfy ourselves that the quick onward transmission of funds was the *modus operandi* and an existing relationship between the intermediary and S was well-established.

The payment of some returns also doesn't overturn the other persuasive evidence that this was a scam. The payment of small returns is a common feature of many investment scams.

Was the difference in purpose the result of dishonest deception?

The lack of co-operation by the director of both companies with the liquidators and the disqualification of the director persuade me that the inducement of payment by the victims was as a result of the director's and his businesses' dishonest deception.

In the absence of any convincing evidence that S was carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code, and Nationwide should refund Mr G's losses.

Do any exceptions to reimbursement apply here?

There are two potential exceptions to reimbursement that Nationwide might rely on to deny a claim under the Code. Though it's made little argument that either should apply, I'll provide some brief findings on those potential exceptions. They can be summarised as:

- The customer ignored an effective warning given by the business at the time payment was being made; *and*

- The customer made a payment without holding a reasonable basis for believing it was being made to a legitimate party for a legitimate purpose.

Nationwide has presented limited evidence to suggest a warning would have been shown when Mr G made the payment to the intermediary, where there isn't specific confirmation of it being presented. However, I find it highly unlikely Nationwide would be able to demonstrate that the effective warnings exception could fairly and reasonably be relied upon here.

The example warning Nationwide has provided doesn't meet the standards for firms under the Code. It doesn't fully bring to life what an investment scam looks and feels like, and there's no description of the consequences of proceeding.

Even if it could otherwise demonstrate it had met the standards for firms, my finding would still more likely than not be that Mr G acted reasonably in moving past a warning – as opposed to ignoring one – given the apparent legitimacy of the investment. It also seems unlikely Nationwide would have uncovered the scam at the point payment was being made, but that isn't an exception to reimbursement under the Code. It would only mean the bank hadn't necessarily failed to meet its requirements and that no party was at fault.

Nationwide also hasn't demonstrated that Mr G lacked a reasonable basis for belief. Again, I believe it's unlikely it would be able to do so given the sophistication of the scam. The involvement of seemingly genuine companies, some of which were FCA regulated, would understandably have made the scam very convincing. And Mr G's interactions with the parties bear that out further, considering the quality and persuasiveness of interactions with S and the materials and channels used to promote the supposed investment.

As no exceptions to reimbursement can be fairly applied, it can be concluded that Nationwide ought to have refunded Mr G when he raised his scam claim. It's then fair and reasonable that it now compensates him to that effect.

Are there other remedies available to Mr G?

It is true that the FSCS will consider some claims against the intermediary. But not all companies that used the intermediary are to be covered; some are excluded. There's nothing the FSCS has published to say claims linked to S will be included.

The Insolvency Service has also publicly stated that the activity S was engaged in was not FSCS protected, setting that out as one of the frequent deceptions S carried out, in that it lied to investors about being covered.

Even if Mr G were able to pursue a claim with FSCS, it and the Financial Ombudsman Service are separate organisations, and the rules governing whether a customer is eligible to receive compensation from FSCS are separate to those which apply to the Financial Ombudsman Service. FSCS will consider the claims submitted to it under the rules set for the FSCS by the Financial Conduct Authority.

Consumers might be permitted to pursue a claim to the Financial Ombudsman Service and the FSCS (should FSCS accept the consumer's claim) involving S, and at the same time.

However, should a consumer receive compensation from the FSCS relating to their claim against S, the consumer may be required to pay any further compensation to FSCS that they receive from their bank (including as a result of any Financial Ombudsman Service award) relating to the consumer's complaint against S. Any questions relating to the terms on which

compensation is paid by the FSCS should be directed to it.

Putting things right

On Mr G's acceptance, nationwide should:

- Refund Mr G's loss to the scam; *and*
- Pay interest on that sum at 8% simple per year, calculated from the date the claim was declined under the Code to the date of settlement.

My final decision

I uphold this complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 March 2025.

Ben Murray
Ombudsman