

The complaint

Mr W is unhappy after he fell victim to an investment scam and Nationwide Building Society decided not to refund him.

What happened

The facts of the case are not in dispute and were set out by the investigator, I'll repeat them here.

Mr W was provided information about an investment opportunity in L, by financial brokers. These were brokers he'd used previously and had made a successful investment with.

The investment was for 18-month loan notes paying 12% annually, with interest to be paid every three months. Mr W received a contract which detailed the terms. He checked Companies House and could see that L was registered. Happy with what he'd been told and seen Mr W made a payment of £250,000 via a CHAPS payment.

Mr W received returns in the form of three payments, for £7,500 each, no further payments were received. He was told that he would receive all the returns at the end of the term with an additional 1% interest to what had been agreed.

After the payments had stopped Mr W was aware that there was information emerging online about one of the directors and he became worried. The company contact details were changed a number of times and it failed to respond to his emails.

Mr W contacted Nationwide in December 2023, but it declined to refund the money he'd lost saying that it thought that this was a civil dispute between him and L and as such wasn't covered by the Contingent Reimbursement Model (CRM) Code. Nationwide also went on to say the claim under the CRM code should be delayed pending the police investigation into the director of L and his other companies.

Mr W's payments were made through an intermediary, I'll refer to that intermediary as N. N was an FCA authorised firm until it went into liquidation.

It has since come to light that S (as well as another company – linked by its director) were shut down by the Insolvency Service for misleading investors and failing to co-operate with an investigation into the firms' affairs.

Another company linked to S (again by its director) has an FCA warning issued against it. And the Insolvency Service advised that the secretary of state has accepted an 8-year disqualification undertaking for the linked director.

The investigator set out a detailed view explaining why they were satisfied Mr W had been the victim of an APP scam. And they were also satisfied that this claim was covered by the CRM code. They said there was no reason to delay this decision, despite the ongoing Police investigation, as there was enough persuasive evidence that this was more likely a scam, than not.

The investigator applied the CRM code and said Nationwide had not established that Mr W did not have a reasonable basis of belief when making these payments, because:

- Mr W was told about the investment by brokers - that he'd successfully used previously.
- He completed checks which showed that L seemed to be a genuine business.
- Mr W received a contract setting the terms of the loan note before making a payment.
- The rate of return wasn't so high as to have concerned him.

The investigator upheld Mr W's complaint in full, recommending for his losses (minus the returns he received) and for Nationwide to pay 8% simple interest per annum from the date it declined the claim to the date of settlement.

Nationwide did not agree with the investigators' findings. It argued that the funds were held by N on behalf of Mr W and therefore control of the funds wasn't lost at the point they were sent to N. By making this argument Nationwide said this claim was not covered by the CRM code as the funds were not sent directly to the scammer.

Specifically, Nationwide wanted the specific time and date that Mr W's funds were sent on to L, from N. The investigator responded with a copy of a final decision where the issue of funds passing through N had already been decided. The investigator also added that as a service we have seen multiple complaints regarding L. And where payments have been made through N we were satisfied the funds were passed on each time to the companies the consumers believed they were investing in – here L.

As the complaint couldn't be resolved it was passed to me to decide.

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've come to the same conclusions as the investigator. I'll set out my findings in full below.

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.

Nationwide is a signatory of the Lending Standard Board's Contingent Reimbursement Model Code (the LSB's CRM Code). And has therefore adhered to agree to its principles. The CRM Code requires firms to reimburse victims of APP Scams in all but a limited set of circumstances.

The investigator set out their explanation for making the finding this was an APP scam (and therefore a claim caught by the CRM code) but for clarity I'll repeat the salient points here.

- The director of L has been disqualified as a director on Companies House for eight years, by the secretary of state.
- a full winding up order for L can be found on Companies House.

- The director has failed to provide liquidators with accounting records for several of his companies and has said he will not be providing these.
- The FCA issued a warning about L, in March 2020, saying it was providing financial services without authorisation.
- There is no evidence to suggest L was operating as legitimate company. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The lack of co-operation by the director 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 and his businesses dishonest deception.

In the absence of any convincing evidence that L was carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code.

Nationwide hasn't provided any persuasive evidence that L was operating legitimately. Other than saying it was registered in Companies House and Mr W received returns. But those facts alone do not persuade me this was a legitimate investment given the other information I have referred to above.

Whilst there is an on-going Police investigation, Nationwide cannot apply the R3(1)(c) provision to delay giving an outcome under the code where an outcome has already been given.

However, there is no need to delay a decision if all parties agree this is a scam. Nationwide hasn't provided an explanation why awaiting the police investigation would reasonably inform an outcome under the CRM code. A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if Nationwide, under the voluntary CRM code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in this particular instance. There is enough evidence here that on balance Mr W was more likely than not the victim of an APP scam.

Involvement of N

The involvement of a genuine intermediary (here N) does not exclude the possibility of the CRM code applying. Here I'm persuaded the funds were under the control of the fraudster at the point they arrived at the intermediary (N). Mr W does not appear to have a customer relationship with the intermediary. And I'm satisfied that the intermediary (N) was acting on behalf of L and not the consumer. The money was out of the consumers control and so the payments made here are capable of being covered by the provisions of the CRM Code. Nationwide has argued that Mr W should raise a claim with the FSCS for a claim against N. But as I've explained Mr W had no relationship with N, it did not hold his money – I'm satisfied the funds were passed on from N to L. So, I do not agree that Mr W's complaint is with N rather than a claim under the CRM code with Nationwide.

And we know from looking at these cases the money moved from N and L with no further involvement from the consumer suggesting an on-going agreement between N and L.

Mr W has been issued with a letter from the FSCS to explain he must first claim under the CRM code with his bank before any claim by the FSCS would be considered. So I'm satisfied it is correct to consider Mr W's claim against Nationwide in the first instance.

Application of the CRM code to the facts of this case

As I'm satisfied this is an APP scam and caught by the CRM code, I've gone on to apply the provisions of the code below.

The Lending Standards Board's Contingent Reimbursement Model (the CRM Code) requires firms to reimburse customers who have been the victims of APP scams, in all but a limited number of circumstances and it is for Nationwide to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- 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 *Further exceptions outlined in the CRM Code do not apply to this case.

Did Nationwide meet the standards expected of a firm under the CRM Code?

The CRM code says that, where a firm identifies APP scam risks, it should provide "Effective Warnings" to their customers. It sets out that an Effective Warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an Effective Warning should be understandable, clear, impactful, timely and specific.

I'm satisfied given the value of that Nationwide ought to have identified Mr W could be at risk of an APP scam and provided effective warnings in line with the firms' standards under the CRM code. Nationwide hasn't said that any warning was given when Mr W made the payment. So, I'm not satisfied Nationwide met the firms' standards as per the CRM code.

Did the consumer have a reasonable basis of belief?

Nationwide has not provided any argument that Mr W lacked a reasonable basis of belief when making these payments. And I agree with the investigators' findings that Mr W did have a reasonable basis of belief and I have set out those reasons below.

- The funds were being sent to an FCA-regulated company - N - which was receiving funds on behalf of L.
- Mr W was presented with links, brochures and details regarding the investment, this was detailed in content and looked professional which is what you would expect from a genuine investment company.
- I have not found any clear or compelling evidence at the time that would have revealed to Mr W that the investment opportunity was in fact a scam.
- While the rate of return was high, it wasn't so large that it was obviously too good to be true.
- Mr W had been recommended the investment by a broker who he'd received advice from previously and had no concerns about those investments.

Following this finding I'm not satisfied that Nationwide can rely on any exception to reimbursement under the CRM code, and I uphold this complaint in full.

Putting things right

Overall, and for the reasons set out above, I'm satisfied that Nationwide should've reimbursed Mr W under the provisions of the CRM Code. And, in those circumstances, I direct Nationwide to now fairly and reasonably compensate Mr W by:

- Refunding Mr W for his losses which were £250,000 minus his returns – which I have estimated to have been £22,500. Leaving a loss of £227,500.
- Plus pay 8% simple interest from the date it declined the claim to the date of settlement. I've awarded 8% simple interest as Mr W tells us he received funds from an inheritance prior to this investment. And I can see that at the time Mr W made multiple investments with this and other money so I'm satisfied he would have likely also invested these funds had it not been a scam. And therefore it is appropriate to award 8% simple interest to reflect the loss of opportunity otherwise save or invest those funds.

My final decision

I uphold Mr W's complaint against Nationwide Building Society and direct it to settle the complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 March 2025.

Sophia Smith
Ombudsman