

The complaint

Miss M complains that Nationwide Building Society ('Nationwide') won't refund the money she lost when she fell victim to a scam.

What happened

Miss M's complaint has been brought by a professional representative. It's said that in 2020 a friend of Miss M's had told her about an investment opportunity with a company that I'll refer to as B. They were promoting a scheme under which investors would provide the funds for the acquisition of new vehicles. Those vehicles would be bought on their behalf and leased out by a connected company (R). Investors would retain security over the car by way of a fixed charge along with monthly returns. At the end of the leasing period, the investor would also receive a final lump sum and the security over the vehicle released.

B told Miss M that she could expect to earn a 10% return on her investment. Amongst the various assurances she was given by the company, she was told the investment was "*asset backed*" – in other words, her funds were associated with and secured against a specific vehicle. That meant her investment was more secure.

Miss M's friend had already invested with B at the time in 2020 and having recently retired was looking to invest a small amount of the cash lump sum she received. With all the information provided about the investment opportunity, Miss M felt it was a safe investment so she agreed to invest a sum of £14,000. Miss M used her Nationwide account to make two individual payments of £7,000 and they appear on her statements dated 28 January 2020. Miss M would go on to receive monthly returns of £255.69 from February 2020 but these stopped in early 2021. Miss M says she was told by B that their company bank accounts had been frozen but that this had all been a mistake.

Shortly afterwards, Miss M says that she reported B to Nationwide but was advised there was nothing they could do and that she ought to let Action Fraud know. Miss M says she was advised there was no evidence of fraudulent activity to suggest the payments she made were the result of a scam and so no reimbursement was offered.

In June 2023, Miss M complained to Nationwide through her representative. They said Nationwide failed to protect her at the time she made the payments to B and she should be reimbursed under the Lending Standard Board's Contingent Reimbursement Model Code (CRM Code).

Nationwide didn't agree to reimburse Miss M's loss. It said she paid a legitimate company that went into administration and concluded Miss M had a civil dispute with B. Nationwide noted that as leases were continuing (according to the insolvency practitioner) then it could be a case more funds will be returned to Miss M as part of those contracts. In any event, at the time Miss M made her payments, B's partner firm R were a regulated company.

Nationwide acknowledged ongoing investigations by the FCA, no outcome had been reached only a suspicion of fraud. No further updates had been given at that stage in 2023

and no charges had been made. Nationwide said if Miss M could provide an update or outcome from the Serious Fraud Office ('SFO') then it would be happy to review this again.

Nationwide also said it didn't consider the payments unusual as Miss M had made an earlier payment of £7,000 in November 2019. It also said had they intervened, there was no suggestion it could've prevented the payments as Miss M's claim of fraud had still not been confirmed nearly two years after an investigation had been launched.

Miss M was unhappy with the response from B and referred her 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 statutory body investigation – in this case the SFO Investigation on 19 January 2024 but had not done so. The investigator went on to explain why he felt Miss M's complaint was covered by the CRM Code – and recommended that Nationwide reimburse Miss M's losses 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 Miss M to sign an indemnity confirming she will return any funds that may later be recovered in the administration process, if it wished to do so.

Miss M accepted the investigator's findings. Nationwide didn't respond and it didn't respond at notification the case was being referred for a 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.

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?

Whilst Nationwide didn't engage with the investigator's findings, it did set out within its final response letter that if Miss M could provide an update or outcome from the SFO then it would be happy to review this again

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, whilst Nationwide had said it would be happy to review Miss M's claim again should she provide an update or outcome from the SFO, within the same final response letter it sent to Miss M on 15 June 2023 it said it couldn't agree Miss M was the victim of a scam. In the circumstances, I'm satisfied Nationwide can't rely on the above provisions – it can't delay a decision it has already made. In any event, the SFO investigation 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 Miss M, the CRM Code required it to do so within 15 business days of 19 January 2024.

I ultimately have to decide whether it is fair and reasonable for Nationwide not to have upheld Miss M's claim for reimbursement of her losses. I am aware there are ongoing court proceedings, and there may be circumstances and cases where it is appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I am conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I am required to apply (which is the balance of probabilities).

The Lending Standards Board has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So in order to determine Miss M's complaint I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that Miss M was the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait to decide Miss M's complaint unless there is a reasonable basis to suggest that the outcome of any external investigation may have a material impact on my decision over and above the evidence that is already available. For the reasons given below, I'm not persuaded the outcome of the court case will have a material impact on my consideration of the fair and reasonable outcome to this complaint. Therefore, 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 Miss M'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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

To decide whether Miss M is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Miss M thought this purpose was legitimate.
- The purpose the recipient had in mind at the time of the payments, and whether this broadly aligned with what Miss M 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 – that is, that it was criminally obtained.

From the evidence I have seen I'm satisfied Miss M intended to invest in B. She understood that B would use the funds she paid to buy a car that would be leased, and she would receive returns on this investment. I haven't seen anything to suggest that Miss M 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 Miss M and I'll explain why.

In February 2021, the FCA published its first supervisory notice in respect of R. 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. In other words, the overwhelming majority of the cars acquired by B weren't secured in the way Miss M was told they would be. I've also considered the following factors:

- The same supervisory note concluded a sampling of R's leaseholder list against the DVLA database found various discrepancies between its business model and vehicle inventory with a number of vehicles identified as being second hand. It's business model relied to a large extent on securing heavy discounts on new vehicles.
- And some vehicles could not be identified and a number of leases were entered into 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.
- A report by the administrators of one of the connected companies found that it had entered into around 3,600 individual agreements with investors. Each agreement should've been associated with a specific vehicle. But the company only had legal title to around 600 vehicles equating to less than one car for every six loan agreements.
- The news release from the SFO dated 19 January 2024 which confirms two directors of B were charged in relation to the car lease scheme noted that they were accused of providing those who signed up with false information in the knowledge that investments weren't backed up by the cars they had promised.

Furthermore, in Miss M's case the "Vehicle Funding Form" she was provided with didn't specify a particular vehicle with reference to the vehicle 'Make' only as *TBC*. The form did however refer to the number of units (1) being funded. And as far as I can see, no relevant fixed charge was registered on the profile of B's partner company on Companies House.

Therefore the evidence I've referred to shows this aspect of the investment wasn't being performed.

In light of the above, I'm persuaded that it's more likely than not the discrepancy between B's purpose in procuring the payments and Miss M's in making them was the result of dishonest deception on the part of B. As a result, I'm satisfied the circumstances here meet the definition of an APP scam under the CRM code.

Should Miss M 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 ignored an effective warning in relation to the payment being made; or
- The customer made the payment without 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 ¹

It is for Nationwide to establish that an exception to reimbursement applies. Here, Nationwide hasn't considered Miss M'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 completeness I've covered off why I'm not persuaded any of the listed exceptions can be fairly applied.

Nationwide's final response letter indicates that Miss M was provided tailored warnings. Though it hasn't specifically argued that Miss M ignored an effective warning when making the two payments. I've also not seen any evidence that one was displayed at the time and so I'm satisfied that it can't rely on this exception.

The way Miss M was told the investment would work isn't inherently problematic and she wasn't promised returns that were objectively too good to be true. In addition to that, the company had been operating for several years and its partner company was authorised by the FCA. Overall, I'm not persuaded there was anything about the investment that should have caused Miss M significant concern or that Nationwide has established that she made the payments without a reasonable basis for believing that the investment was legitimate.

I've also thought about whether there is any other reason why Nationwide should reimburse Miss M. Even if I were to conclude Nationwide ought reasonably to have intervened and asked Miss M probing questions about the nature of the payments and provided scam advice, I don't consider the scam would have been uncovered and her 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 Miss M was at risk of financial harm.

There appears to be a minor discrepancy between what Miss M says she has received in returns (12 payments of £255.69) and what Nationwide says Miss M has received (11 payments of £255.69). I have not seen all of Miss M's statements for the relevant period to verify all of the returns she has received. Nevertheless, any returns she has received should be deducted from the amount Nationwide should reimburse.

¹ There are further exceptions within the CRM Code, but these don't apply here.

Interest

For the reasons I've explained, I'm upholding this complaint and directing Nationwide to reimburse the payments Miss M made in connection with the scam, less the returns that she received.

Typically, I'd also award 8% simple interest on that refund calculated to run from the date the claim was declined under the CRM Code. That wouldn't be fair and reasonable here. Nationwide reached its decision on the claim many months prior to the SFO concluding its investigations. It couldn't have known what the outcome of those investigations was going to be. The CRM Code allows signatories 15 days to make a decision after the outcome of an investigation is known. Any interest calculation should, therefore, start 15 days after the SFO concluded its investigation on 19 January 2024.

There is also a possibility that, as a consequence of the administration of B (and associated companies) and the prosecution of its directors, the authorities might recover funds to which Miss M has a partial entitlement. If Nationwide reimburses her in full now, there is a risk that she ends up recovering more money than she lost to the scam. Whilst I don't know how likely that is, I agree that if Nationwide has already paid a refund, it would not be reasonable for those recovered funds to be returned to Miss M.

It is open to Nationwide to ask Miss M to sign an indemnity confirming that she 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 Miss M and Nationwide. I'm not persuaded that this is a reasonable barrier to it reimbursing her in line with the Code's provisions.

Putting things right

Overall, I'm not satisfied Nationwide treated Miss M 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 Miss M £14,000 less any payments she received back, which Nationwide is entitled to clarify; 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 Miss M to accept or reject my decision before 10 December 2024.

Mark O'Connor
Ombudsman