

The complaint

Ms P and Ms P complain that Nationwide Building Society did not refund the £98,000 they lost to a scam.

What happened

Ms P and Ms P found an investment opportunity in the newspaper for a company I'll call 'X'. The business model centred around car leasing; investors like Ms P and Ms P would make an investment in X, which would be used to purchase vehicles that could be rented out to individuals. Investors would get security over a vehicle and would receive a monthly return on its leasing for a set amount of time before receiving an exit fee consisting of the remainder of the capital and the interest detailed in their agreement. Ms P and Ms P made a number of deposits from their Nationwide account:

| Date | Amount |
|--------------|----------------|
| 27/08/2019 | £10,000 |
| 27/08/2019 | £10,000 |
| 27/08/2019 | £10,000 |
| 27/08/2019 | £10,000 |
| 27/08/2019 | £10,000 |
| 28/08/2019 | £10,000 |
| 28/08/2019 | £10,000 |
| 28/08/2019 | £10,000 |
| 28/08/2019 | £10,000 |
| 28/08/2019 | £8,000 |
| Total | £98,000 |

Ms P and Ms P received 17 instalments of £1,871 in returns, totalling £31,807 before the repayments stopped. This left them with a total loss of £66,193. Ms P and Ms P felt they had been the victims of a scam and raised a scam claim with Nationwide in December 2023. Nationwide issued a final response letter in January 2024 in which they explained X was a registered company and that Ms P and Ms P had received returns on their investment, so they felt this was a civil dispute and did not meet the definition of a scam.

Ms P and Ms P referred the complaint to our service and our Investigator looked into it. They felt that, on balance, it was more likely this was a scam and not a civil dispute as Nationwide had said. In summary, they explained that the Serious Fraud Office ("SFO") had charged the directors of X, so they saw no reason why a review of the transactions under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code should be delayed. And as the report issued by the FCA found X's actual assets differed significantly to what investors had been told, they felt Ms P and Ms P's transactions met the CRM code's definition of a scam.

Having reviewed the transactions under the code, the Investigator felt Ms P and Ms P had a reasonable basis to believe they were involved in a genuine investment as the paperwork they received appeared to be professional. So, they recommended a full refund of Ms P and Ms P's losses, less any returns they received. As well as 8% simple interest on the transactions from 15 days after the date the directors of X were charge by the SFO to the date of settlement.

Ms P and Ms P accepted the findings set out in the view, however Nationwide explained they were unable to provide a reply to the findings.

As an informal agreement could not be reached, the complaint has been passed 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.

It isn't in dispute that Ms and Ms P authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say that they have been the victims of an authorised push payment (APP) scam.

Nationwide has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

Can Nationwide delay making a decision under the CRM code?

In Nationwide's final response letter to Ms and Ms P's complaint, they said the payments were a failed investment and not a scam, so they did not review the complaint under the CRM Code. When the complaint was referred to us and Nationwide sent their business file, they acknowledged there was an ongoing investigation with the SFO and they would review any new evidence that came to light.

The CRM Code states:

R3(1) Firms should make the decision as to whether or not to reimburse a Customer without undue delay, and in any event no later than 15 Business days after the day on which the Customer reported the APP scam.

(a) In exceptional cases, that period can be extended provided the Firm informs the Customer of the delay and the reasons for it, and the date by which the decision will be made.

(b) The date in (a) should not be more than 35 Business days after the day on which the Customer reported becoming the victim of an APP scam.

(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).

As the SFO has confirmed in January 2024 that their investigation is complete and charges have been filed, Nationwide should reasonably have given an answer based on the evidence available as per the section of the code set out above.

I also note that the Lending Standards Board has confirmed the code does not require a criminal test to be met in order for a reimbursement decision to be reached. With this in mind, as the directors of X have been charged by the SFO, I am not persuaded that Nationwide can fairly delay giving an outcome under the CRM Code.

Have Ms P and Ms P been the victims of a scam, as per the CRM Code?

I have set out the definition of an APP scam as set out in the CRM Code below:

...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.

I've therefore considered whether the payments Ms P and Ms P made to X fall under the scope of an APP scam as set out above. Having done so, I think that it does. I'll explain why in more detail.

In order to determine if Ms P and Ms P have been the victims of a scam, I have to consider if their intended purpose for the payments were legitimate, whether the intended purposes they and the company they paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Based on the evidence available to me, it appears Ms P and Ms P expected the funds to be used to purchase vehicles which would then be leased by a subsidiary of X. They would then receive regular returns on this investment. As X's subsidiary was an FCA regulated company, and the documents Ms P and Ms P received appeared to be professional, I see no reason why they would not have thought it was a legitimate investment.

I've gone on to consider whether X's intended purpose for the payments aligned with what Ms P and Ms P intended as set out above. There are two reports that have helped to form my understanding of X's intended purpose for the payments, one by the FCA and another by the administrators of X and their subsidiaries.

The FCA's report states that the number of customers X claimed had entered into leases was 1,200, however they only had 69 registered vehicles on Companies House across its three subsidiaries. When the FCA did a deep dive into the registered vehicles, they found significant discrepancies between the X's business model and the vehicle inventory. These included a high number of what appeared to be second-hand vehicles. While X's business model did allow for some used cars to be leased, it relied on a large extent to securing deep discounts on new vehicles which would not be available on second hand cars. A number of leases were also said to have been entered into at a date which was significantly before the vehicle was put onto the road.

The FCA also found X's valuation of its motor vehicles as unrealistic, and felt the discrepancy was around £18 million. The report from the administrators of the subsidiaries

also stated that there was less than one car for every six loan agreements that were known about at the time of liquidation. With the above in mind, I am satisfied that X was not carrying out investments as per the agreements with investors such as Ms P and Ms P. I've seen no evidence to suggest Ms P and Ms P had security over a specific vehicle. And I note the section of the agreement they signed with X that set out the details of the car were left blank.

The SFO has confirmed that the directors of X were accused of falsifying information to encourage people to pay in whilst knowing that the investments were not actually backed up by the cars they had promised. Having considered all of the information available from the FCA, the SFO and the administrators, I am satisfied that investors were dishonestly deceived into making their payments. And it follows that Ms P and Ms P's payments meet the CRM Code's definition of an APP scam as set out above.

Do exceptions to reimbursement under the code apply in this case?

As explained previously, the starting point in law is that Ms P and Ms P are responsible for any payments they have authorised themselves. But the CRM Code requires a firm to reimburse victims of APP scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply. One such exception is if Ms P and Ms P made the payments without a reasonable basis to believe they were for a genuine investment or that X was not legitimate.

From what I've seen, the documents Ms P and Ms P received from X prior to investing all appeared reasonably professional and looked to be legitimate. Their understanding of the investment itself and how it would work did not sound unreasonable and there was nothing to suggest at the time that X itself was not legitimate and I note one of its connected companies was authorised and regulated by the FCA.

With this in mind I don't think there was anything about the investment at that time that should have given Ms P and Ms P cause for concern. So, I don't think it has been established that they made the payments without a reasonable basis to believe the investment and/or X was legitimate.

Any other considerations?

I don't think Nationwide could've taken any other action in order to prevent Ms P and Ms P's loss, either at the time the payments were made or when the scam was reported to them. I say this as I don't think they'd have been able to identify that this was a scam at the point of the payment, given the sophistication of the scam.

Further to this, Nationwide wouldn't have been able to have recovered Ms P and Ms P's losses from the beneficiary bank at the time the scam was reported to them, given that the company had entered liquidation and no funds could've been returned by the beneficiary.

Redress.

As Ms P and Ms P received a number of monthly interest payments back from the car lease company, I think it would be fair for these payments to be deducted from the amount Nationwide reimburses them.

The CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. I therefore think Nationwide should have responded to Ms P and Ms P's claim and refunded their losses under the CRM code within 15 days of the SFO publishing the outcome of its investigation. And so, I think Nationwide should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date

of settlement.

As the car leasing company is now under the control of administrators, it's possible Ms P and Ms P may recover some further funds in the future. So, if it wishes, I don't think it would be unreasonable for Nationwide to request they complete an indemnity confirming they will return any funds recovered in future to Nationwide. But this will be for them to arrange separately from the settlement of this complaint.

My final decision

For the reasons set out above, I uphold this complaint and require Nationwide Building Society to:

- Refund Ms P and Ms P the payments he made as a result of this scam, less the payments they received back from X.
- Pay Ms P and Ms P 8% simple interest on that refund, from 15 days after 19 January 2024 until the date of settlement.

If Nationwide Building Society considers that it's required by HM Revenue & Customs to deduct income tax from the interest I've awarded, it should tell Ms P and Ms P how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P and Ms P to accept or reject my decision before 29 November 2024.

Rebecca Norris
Ombudsman