

## **The complaint**

Mr and Mrs B complains that Nationwide Building Society (“Nationwide”) won’t refund the money they lost when they fell victim to a scam

## **What happened**

In July 2020 Mr and Mrs B came across an opportunity to invest in a company (Buy2let/Raedex Consortium Ltd – referred to as R in this decision) which leased cars. They were told the investment would be used to purchase a new vehicle which would then be leased out. The driver would make monthly lease payments, with part of these repayments being passed on to Mr and Mrs B by R over the term of the investment. Mr and Mrs B were told at the end of the investment term, the driver would return the vehicle and Mr and Mrs B would receive their final exit payment from R which would consist of the remainder of capital and interest detailed in the agreement. Mr and Mrs B was also told that the investment was secured against a vehicle.

In July 2021 Mr and Mrs B transferred £14,000 to R. Mr and Mrs B received returns of £1,814.14 until February 2021. Shortly after this R went into liquidation.

Mr and Mrs B believed they’d been victims of a scam and contacted Nationwide to ask it to return their funds. Nationwide declined to refund Mr and Mrs B on the basis that it considered this was a failed investment, rather than a scam.

One of our investigators looked at the complaint. He said the evidence showed there was a clear discrepancy in alignment between the payment purposes Mr and Mrs B and R had in mind, so this met the definition of a scam. He also said he was satisfied Mr and Mrs B had no reason to suspect the investment wasn’t legitimate. So, he recommended Nationwide refund Mr and Mrs B’s losses in full (less his returns). He recommended interest be added from 15 days after the date the directors of R were charged by the Serious Fraud Office (SFO) to the date of settlement.

Nationwide did not respond to the view.

As the complaint could not be resolved informally, it’s been passed to me 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.

When considering what is 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 relevant time.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer 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 customer 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 (LSB) Contingent Reimbursement Model (CRM Code) for authorised push payment scams. The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams - in all but a limited number of circumstances. Nationwide was a signatory to the CRM Code at the time the payments in question in this case were made.

Where a firm is a voluntary signatory of the LSB's CRM Code, I need to see whether it is a relevant consideration for my decision. And, where it is a relevant consideration, I must carefully consider the provisions of the LSB's code itself that the firm has agreed to and any guidance the LSB has provided on its application.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment(s) in question, on the balance of probabilities, meet the CRM Code's definition of a scam

An "APP scam" is defined in the Definitions and Scope section of the CRM Code:

*"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

If I, fairly and reasonably, make a balance of probabilities conclusion that it does, then the provisions of the CRM Code apply. In that event, unless Nationwide is able to show that the consumer is not entitled to reimbursement due to any the CRM's Code exceptions at R2(1) and the vulnerability considerations are not relevant, then the consumer is likely to be entitled to reimbursement.

### *Can Nationwide delay making a decision under the CRM Code?*

Nationwide hasn't responded to the view of 30 August 2024. But it felt this wasn't a scam, but a genuine company gone into liquidation. It's not clear to me whether the lack of response is because there are ongoing statutory investigations. And whether Nationwide believe we should wait for the outcome of those before making a final decision.

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. By not responding it's possible Nationwide considers that R3(1)(c) applies in this case. In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision - for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *“a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code”*.
- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP Rule, for our service to decide the merits of the complaint about the payment(s) they made fairly and reasonably on the balance of probabilities.

So, this provision only applies *before* the firm has made its decision under the CRM Code. So, Nationwide can't seek to delay a decision it's already made. It had already reached a decision on Mr and Mrs B's claim in its final response letter to them and in its initial submissions to this service, when it said the complaint was not a scam, but a genuine investment gone into liquidation.

So, I don't think Nationwide can now rely on this provision.

### *Is it appropriate to determine Mr and Mrs B's complaint now?*

I ultimately have to decide whether it is fair and reasonable for Nationwide not to have upheld Mr and Mrs B's claim for reimbursement of their losses.

The Serious Fraud Office (SFO) had been carrying out an investigation into the car leasing company and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of R's former company directors with fraud, on its website.

There may be circumstances and cases where it is appropriate to wait for the outcome of external investigations and/or related court cases. 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 - as explained above - 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 Mr and Mrs B'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 Mr and Mrs B 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 Mr and Mrs B's complaint unless there is a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available.

Nationwide has not clearly articulated whether it considers this may be the case. It's not clear if Nationwide is concerned that any subsequent court action regarding R's actions may lead to Mr and Mrs B being compensated twice for the same loss, i.e. by Nationwide and by the courts. But I don't know how likely it is that any funds will be recovered as part of those proceedings.

Similarly, I am aware that there is an ongoing administration process – including liquidation. This might result in some recoveries; but given this would initially be for secured creditors, I think it's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive. That said, in order to avoid the risk of double recovery Nationwide is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

I am also aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here: <https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/>

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mr and Mrs B is now complaining to us about in connection with the activities of Nationwide.

As I have determined that this complaint should be upheld, Mr and Mrs B should know that as they will be recovering compensation from Nationwide, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount he recovers from Nationwide they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr and Mrs B has already made a claim at FSCS in connection with this matter and in the event the FSCS pays compensation, Mr and Mrs B is required to repay any further compensation he receives from his complaint against Nationwide, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: (<https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice/>)”

Whilst the FSCS may be taking on these cases against R as a failed unregulated investment – it does not automatically follow that this was *not a scam*. This is not something that the FSCS would make a finding on before considering those claims.

As Nationwide can ask Mr and Mrs B to undertake to transfer to it any rights they may have to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing them in line with the CRM Code's provisions.

So as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case (which isn't scheduled for more than two years). Nor do I consider it's necessary to wait for the administration process to complete or wait for a claim with FSCS to be made. All in all, I don't think it's fair for Nationwide to delay making a decision on whether to reimburse Mr and Mrs B any further.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the court case for me to reach a fair and reasonable decision. And I don't think it would be fair to wait for other investigations to complete before making a decision on whether to reimburse Mr and Mrs B.

*Have Mr and Mrs B been the victim of a scam, as defined in the CRM code?*

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).

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier. So it wouldn't apply to a genuine investment that subsequently failed.

And the CRM Code only applies if the definition of an APP scam, as set out in it (and as I have set out at the start of this decision), is met.

I've considered the first part of the definition and, having done so, I'm satisfied that Mr and Mrs B paid the account they were intending to send the funds to. And I do not think there was any deception involved when it comes to who he thought he was paying. So, I do not think the first part of the definition set out above affects Mr and Mrs B's transactions.

I've gone on to consider if Mr and Mrs B's intended purpose for the payment was legitimate, whether the intended purposes they and the company (R) he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of R.

From what I've seen and what Mr and Mrs B have told us, I'm satisfied Mr and Mrs B made the payment with the intention of investing with the car leasing company. They thought their funds would be used to purchase a vehicle which would then be leased out, and that they would receive returns on their investment. And I haven't seen anything to suggest that Mr and Mrs B didn't think this was legitimate.

I've considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or genuine investment.

But I think the evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payments it had agreed with Mr and Mrs B.

Mr and Mrs B were told their capital would be used to fund a specific vehicle and the documentation listed one of the key benefits as 'UK asset-back Security'. But there's no evidence this was the case or that the consumer's funds were secured against a specific vehicle.

The FCA also checked a sample of the vehicles the companies held against the DVLA database and found a significantly larger proportion of these were second-hand than the companies' stated business model suggests or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles.

It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles were not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 - or less than one car for every six loan agreements.

There's no record at Companies House of any charge in Mr and Mrs B's favour over any vehicle with the company following his investment. And, as I think the evidence shows the company was largely not carrying out this key aspect of the investments, I think it's safe to conclude that this wasn't done in Mr and Mrs B's case either.

So I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mr and Mrs B to believe they were making. And so the purpose the company intended for the payments Mr and Mrs B made wasn't aligned with the purpose Mr and Mrs B intended for the payments.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in whilst knowing that investments were not in reality backed up by the cars they had been promised. So I think the discrepancy in the alignment of the payment purposes between Mr and Mrs B and the company was the result of dishonest deception on the part of the company.

And so I think the circumstances here meet the definition of a scam as set out under the CRM Code.

*Is Mr and Mrs B entitled to a refund under the CRM code?*

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr and Mrs B. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning.

A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the 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

There are further exceptions within the CRM Code, but they do not apply in this case.

Although Nationwide has not established that any of those exceptions apply, for completeness I find that none apply in this case. I have explained why below:

The way Mr and Mrs B was told the investment would work doesn't appear to be suspicious and the returns he was told he would receive don't appear to be too good to be true. And, in line with a genuine investment opportunity, the brochure stated that the investment wasn't completely guaranteed. The investment material and communications with R I've reviewed appears professional and there was nothing in the public domain at the time about R that Mr and Mrs B could've reasonably inferred from that a scam was taking place. And it appears the company had been operating for several years. One of the connected companies was authorised and regulated by the FCA, and a number of previous investors (including Mr and Mrs B) had received the returns they were told they would. So, I don't think there was anything about the investment that should have caused Mr and Mrs B concern. And I find Nationwide hasn't established that Mr and Mrs B made the payment without a reasonable basis for belief that the investment was legitimate.

Nationwide hasn't submitted it provided a warning at the time Mr and Mrs B made the transaction – so I can't fairly say Mr and Mrs B ignored an effective warning.

And so, I don't think Nationwide has established that any of the exceptions to reimbursement under the CRM Code apply here, and so it should refund the money Mr and Mrs B lost in full.

### **Putting things right**

As Mr and Mrs B received monthly interest payments back from R, I think it would be fair for these payments to be deducted from the amount Nationwide has to refund them. This amounts to £1,814.14. So their loss is £12,185.86.

I also don't think any action I would've expected Nationwide to take would have prevented Mr and Mrs B making these payments, as I don't think any of the information, I would've reasonably expected it to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern. And I don't think it was unreasonable for Nationwide to initially decline Mr and Mrs B's claim under the CRM Code, as it wasn't clear from the evidence available at the time that this was a scam.

But the CRM Code allows firms 15 days to make a decision after the outcome of an investigation is known. So I think Nationwide should have responded to Mr and Mrs B'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.

So in order to put things right for Mr and Mrs B, Nationwide Building Society must:

- Refund Mr and Mrs B the payments they made as a result of this scam (£14,000), less the payments they received back from the company (£1814.14) so £12,185.86
- Pay Mr and Mrs B 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement

As the car leasing company is now under the control of administrators, it's possible Mr and Mrs B may recover some further funds in the future. In order to avoid the risk of double recovery Nationwide Building Society is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

If Nationwide Building Society considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr and Mrs B how much it's taken off. It should also provide a tax deduction certificate if Mr and Mrs B ask for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and I require Nationwide Building Society to put things right for Mr and Mrs B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 17 January 2025.

Kathryn Milne  
**Ombudsman**