

The complaint

Ms O complains that Nationwide Building Society ('Nationwide') won't refund the money she says was lost as the result of a scam.

What happened

In 2013, Ms O heard about an investment on the radio. It involved a company I'll refer to as B, as well as a linked company I'll refer to as R. Ms O made a number of investments with B/R between 2013 and 2017, with no issues.

In 2020, Ms O decided to invest again. The investment involved B buying cars, which it then leased to customers who may otherwise have had trouble securing a leased car. Ms O was to receive a monthly return, as well as a lump sum at the end of the three-year term.

In September 2020, Ms O made three payments to B for £10, £6,000 and £6,000 from her Nationwide account. She also made a payment from an account she held with another bank for £1,990.

Ms O received returns as expected in October 2020, November 2020, December 2020 and January 2021, of £267.36 per month – for a total of £1,069.44. All of which were credited to her Nationwide account.

In February 2021, Ms O received a letter that B was being investigated by the FCA and the company accounts were frozen. Then in March 2021, B went into administration.

Based on the information provided to investors, Ms O believed she'd been the victim of a scam. Through a professional representation, Ms O raised a fraud claim with Nationwide in 2023.

Nationwide investigated Ms O's fraud claim but declined to refund her. Nationwide say B was a legitimate company and that Ms O has a civil dispute with them.

Ms O wasn't happy with Nationwide's response, so she brought a complaint to our service.

An investigator looked into Ms O's complaint and recommended that Nationwide refund Ms O's outstanding loss. The investigator explained that the evidence showed that Ms O's funds weren't used for their intended purpose and were obtained by dishonest deception, so her claim was covered by the Contingent Reimbursement Model Code ('CRM Code'). Under the CRM Code, Ms O was entitled to a full refund as she had a reasonable basis for believing the investment was legitimate when she made the payments.

Following a review, the investigator amended the redress slightly, saying that the returns should fairly applied (based on the size of the investment payments made) across both of Ms O's complaints – the one against Nationwide as well her complaint against the other bank. On that basis, the investigator recommended that returns of £917.58 be deducted from Ms O's loss on this complaint. This meant Nationwide were being asked to refund her net loss of £11,092.42.

Nationwide responded to the investigator's opinion, saying they weren't going to comment until they had an update from UK Finance. Nationwide also raised a query in relation to the credits Ms O received in relation to her investments with B/R – in particular earlier returns and lump sum credits that haven't been taken into account.

As the case couldn't be resolved informally, it has been passed to me to review.

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 broad terms, the starting position in law is that Nationwide are expected to process payments that a customer authorises them to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Is Ms O entitled to a refund under the CRM Code?

Nationwide are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Ms O made her payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Ms O thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Ms O understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Ms O was making the payments to B as part of an investment. Based on the evidence that Ms O had available at the time, there isn't anything to suggest Ms O didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose B had in mind and whether it was in line with what Ms O thought.

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, "encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised".

- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Ms O's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Ms O's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Ms O's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Ms O is entitled to a full refund unless Nationwide can establish that an exception to reimbursement applies.

Nationwide haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

Does an exception to reimbursement apply?

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

- 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 service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

** There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

Nationwide haven't provided any evidence that suggests an effective warning was shown to Ms O at the time she made the payments, so they can't rely on that exception to reimbursement.

I'm also satisfied that Ms O had a reasonable basis for believing the investment was legitimate. I say this because Ms O has previously successfully invested with B and received the monthly returns as well as the lump sum on maturity. Also, B were an active company on Companies House, had positive reviews online and provided professional marketing material. I haven't seen any evidence that suggests there were warning signs that B wasn't offering a genuine investment when Ms O made her payments in September 2020. So, Nationwide couldn't rely on basis for belief as an exception to reimbursement either.

As, I'm not satisfied that Nationwide can rely on an exception to reimbursement, Ms O is entitled to a full refund of £12,010. Nationwide can deduct from that refund the returns that Ms O received (being £917.58), meaning the net refund should be £11,092.42.

How we've calculated the returns

Nationwide have raised a question about the monthly returns figure that we're using and highlighted lump sum credits that Ms O received from B into her account.

Having reviewed the statements and the investment agreement, I'm satisfied that we are using the monthly returns Ms O received in relation to her investment payment made in 2020, which is the only one we're considering as part of this complaint.

The other figures that Nationwide have queried relate to previous investments Ms O made with B/R, where she received her monthly returns and lump sum on maturity, as set out in those earlier investment agreements. These investments aren't being considered as part of this complaint.

The interest award

Prior to the SFO completing their investigation, Ms O's payments wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, Nationwide should've considered the available evidence and given Ms O an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

It's possible that funds could be recovered at a later date through the administrators and Nationwide are entitled to ask Ms O to sign an indemnity to cover this eventuality.

Statutory body investigating

In response to the view Nationwide said they're waiting for an update from UK Finance.

Under the CRM Code Nationwide could defer giving an answer on a CRM complaint based on R3 (1)(c), which says: "if a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's [Nationwide's] decision, the Firm [Nationwide] may wait for the outcome of the investigation before making a decision".

However, in this case, Nationwide made a decision on Ms O's claim under the CRM Code, saying it was a civil dispute. Nationwide didn't tell Ms O in their Final Response letter that they wouldn't reach a decision, so they can't now rely on that clause. And, based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Ms O's payments are covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for an update from UK Finance, in this case, in order to reach my decision.

Claims made to the FSCS

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 Ms O is now complaining to us about in connection with the activities of Nationwide.

As I have determined that this complaint should be upheld Ms O 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 they recover 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 Ms O has already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Ms O is required to repay any further compensation they receive from their 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>"

Putting things right

To put things right I require Nationwide Building Society to:

- Refund Ms O £11,092.42, and
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement.*
- 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.

* If Nationwide considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms O how much it's taken off. It should also give Ms O a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against Nationwide Building Society and require them to compensate Ms O, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 16 January 2025.

Lisa Lowe
Ombudsman