DRN-5121714

The complaint

Mrs W complains that Nationwide Building Society ("Nationwide") won't refund the money she lost when she fell victim to an investment scam.

What happened

Mrs W's complaint has been brought by a professional representative but I'll only refer to Mrs W in this decision.

Mrs W was actively looking for an investment opportunity when she heard about a company I will refer to as "B" on the radio.

Interested, Mrs W and her husband reached out to B for more information and ultimately decided to invest. Mrs W was told that for every £14,000 they invested, a car would be bought on their behalf and leased out by a connected company – "Raedex". They would receive monthly returns and a final gross payment at the end of the term. The vehicle itself would act as security for the investment.

Mr and Mrs W originally invested in 2018 but this investment, nor the associated returns, do not form part of this complaint.

In 2020, Mrs W made a further investment - totalling £14,000.

Between July 2020 and January 2021, Mrs W received 'returns' on her investment totalling £1,871.52. No further payments were received after this date, so Mrs W's total loss now amounts to £12,128.48.

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

Nationwide didn't agree to reimburse Mrs W's loss. It said she had paid a legitimate company that had ultimately gone into administration. Because of this, Nationwide concluded Mrs W's circumstances amounted to a civil dispute with B.

Unhappy with Nationwide's response, Mrs W brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full.

They said that the CRM Code required Nationwide to provide an outcome within 15 days of the completion of the Serious Fraud Office Investigation on 19 January 2024 but had it not done so.

The investigator went on to explain why they felt Mrs W's complaint was covered by the CRM Code - and recommended that Nationwide reimburse her 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 Mrs W to sign an indemnity confirming she would return any funds that may later be recovered in the administration process.

Mrs W accepted the investigators findings. But Nationwide said it wasn't in a position to respond. So, the case 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.

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.

Is the CRM Code definition of an APP scam met?

Firstly, I have considered whether Mrs W'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 Mrs W is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mrs W thought this purpose was legitimate.

- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mrs W 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.

From the evidence I have seen I'm satisfied Mrs W intended to invest in B. She understood that B would use the funds she paid to buy cars that would be leased, and she would receive returns on her investment. I haven't seen anything to suggest that Mrs W didn't consider this to be a legitimate purpose.

I've then 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 Mrs W. I will explain why in more detail below.

In its first supervisory notice in respect of Raedex in February 2021 the FCA noted said it had entered into approximately 1,200 leases in the period between January 2018 to January 2021, but only 69 charges had been registered.

In the same notice, the FCA said it had conducted a sampling of Raedex's leaseholder list against the DVLA database and identified various discrepancies between its business model and vehicle inventory. The FCA report referred to the fact that 55 cars appeared to be second hand (although its business model relied to a large extent on securing heavy discounts on new vehicles), to vehicles that couldn't be found, and to leases entered into at a date 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.

I have also seen evidence from an SFO news release dated 19 January 2024 which confirms that two directors of B have been charged in relation to the car lease scheme. The news release noted that directors were accused of providing those who signed up with false information, encouraging people to pay in with false information whilst knowing that investments weren't backed up by the cars they had been promised.

The SFO also noted that the investment was backed by a tangible asset – a car. In Mrs W's case the "Vehicle Funding Form" she was provided with when she made her payment didn't specify a particular vehicle but did refer to the number of units being funded. The evidence I have referred to above shows this aspect of the investment wasn't being performed.

A report by the administrators of one of the connected companies said that the total number of loan agreements relating to 834 investors was 3,609. But the number of vehicles held by the company at the time it went into administration was 596, equating to less than one car for every six loan agreements.

Overall, I'm satisfied B didn't provide the investment it offered to Mrs W and didn't follow its business model. The purpose B intended when it took Mrs W's funds wasn't aligned with hers. Given the information provided by the SFO in respect of what the directors of B are accused of, I'm persuaded that the purposes each party had in mind for the payments weren't aligned as a result of dishonest deception. This means that I'm satisfied the CRM Code definition of an APP scam has been met.

Should Mrs W 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 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.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Nationwide to establish that an exception to reimbursement applies. Here, Nationwide hasn't considered Mrs W'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 the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions can be fairly applied.

Mrs W says she first heard about B in 2018 when B appears to have been well established. At this point others had received returns on their investments, and she ultimately did too. She had been provided with a Vehicle Funding Form that looked legitimate, the rate of return didn't appear to be too good to be true and Mrs W paid B. So, I don't think there was anything that ought reasonably to have caused her concern at the time of making the payments.

Nationwide hasn't provided any warnings so hasn't demonstrated that Mrs W ignored an effective scam warning.

I've also thought about whether there is any other reason why Nationwide should reimburse Mrs W. But even if I conclude that Nationwide ought reasonably to have intervened and asked Mrs W 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 Mrs W was at risk of financial harm.

Statutory body investigating

In response to our investigators view Nationwide said they're waiting for an update from UK Finance before providing a response. 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 Mrs W's claim under the CRM Code, saying the payments here were made to a legitimate company. Nationwide didn't tell Mrs W in their Final Response letter that they wouldn't reach a decision, so they can't now rely on that clause now. And, based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Mrs W'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 each 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 Mrs W is now complaining to us about in connection with the activities of Nationwide.

As I have determined that this complaint should be upheld Mrs W 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 Mrs W has already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Mrs W 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

- Nationwide should now refund Mrs W her total outstanding loss minus any returns received.
- Mrs W's representatives have advised Mrs W received returns totalling £1,871.52.

Interest

I'm not persuaded Nationwide acted unreasonably in not upholding Mrs W's claim when it was first reported in June 2023. At the conclusion of the SFO investigation though I consider Nationwide should have assessed all the available evidence and made a decision within 15 business days of 19 January 2024. So Nationwide should pay interest at the rate of 8% simple from 15 business days after the SFO published its outcome on 19 January 2024 on the above refund.

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.

My final decision

I uphold this complaint about Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W to accept or reject my decision before 21 January 2025.

Emly Hanley Hayes
Ombudsman