

Complaint

Mr B is unhappy that Nationwide Building Society didn't reimburse him after he told it he'd fallen victim to a scam.

Background

In 2020, Mr B was contacted and offered an investment opportunity by a company (which I'll refer to as Company A). It was offering a bond to retail investors and said that the funds raised by the sale of those bonds would be used to finance loans for property development. He was told the rate of return for investors was a little under 10% per year.

If he went ahead with the purchase, he was told he would make a payment to a different company (Company B) and that the interest payments would also be made to him by Company B. He did receive some monthly returns of a little under £100, which was in line with what he expected.

However, the payments stopped. In 2021, Company A contacted him and explained that its business had been adversely affected by the coronavirus pandemic. It was therefore having to restructure the bonds. Mr B's existing investment would be transferred to a new bond which paid a more favourable interest rate and one that appreciated annually over a five-year period. However, in order to invest in it, he needed to transfer an additional £1,000. He made that payment directly to Company A.

He used his Nationwide account to make the following payments:

14 July 2020	£5,000	Company B
10 November 2020	£5,000	Company B
30 November 2021	£1,000	Company A

Sometime later, Mr B discovered that Company A had gone into liquidation. He concluded that he must have fallen victim to a scam. He reported the matter to Nationwide, but it didn't agree to reimburse him. It said that Mr B had made payments to a legitimate company that had failed. In its view, he had a private civil dispute with that company rather than being a victim of an investment scam.

Findings

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 at law is that a firm 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. However, that isn't the end of the story. Nationwide is a signatory to the Lending Standards Board's

Contingent Reimbursement Model Code (“CRM Code”). That Code requires signatories to pay refunds to victims of authorised push payment (“APP”) scams in all but a limited set of circumstances.

Is it appropriate to determine this complaint now?

The CRM Code doesn’t cover all payments. For these payments to fall within its scope, they must meet the relevant parts of the CRM Code’s definition of an APP scam. Briefly summarised, Mr B needs to have *“transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*¹

Nationwide has pointed out that there is an ongoing investigation being carried out by the liquidators of Company A and says it would be premature to decide the complaint now. I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the liquidator’s enquiries are continuing. There may be circumstances and cases where it’s appropriate to wait for the outcome of external investigations. But that isn’t necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren’t looking at quite the same issues or doing so in the most helpful way. I’m conscious, for example, that investigations by liquidators or administrators are normally made for the purpose of maximizing recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

In order to determine Mr B’s complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it’s more likely than not that he was the victim of a scam rather than a failed investment. But I wouldn’t proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I’m aware that Mr B first raised his claim with Nationwide in April 2024, and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don’t think delaying giving Mr B an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I’d not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I’m aware the above processes might result in some recoveries for Company A’s investors. In order to avoid the risk of double recovery, I think Nationwide would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr B under those processes in respect of this investment before paying anything I might award to him on this complaint.

For the reasons I discuss further below, I don’t think it’s necessary to wait for the liquidator’s enquiries to progress further for me fairly to reach a decision on whether Nationwide should reimburse Mr B under the provisions of the CRM Code.

Has Mr B been the victim of an APP scam, as defined in the CRM Code?

I’ve considered the submissions of both parties carefully, but I’m satisfied that Mr B fell victim to a scam. I say this because a detailed investigation by the Insolvency Service indicated that there is little evidence that the company was providing bridging loans as it told its

¹ DS1(2)(a)(ii) of the CRM Code

investors it would. It also stated that the company appears to have been operating like a Ponzi scheme. While I acknowledge that some investigations are ongoing, this is compelling evidence that the funds Mr B transferred were not used for the purpose for which they were intended and that he was deceived about that.

I did consider the fact a third-party review website contains a number of customer reviews that appear to have been left by borrowers. However, I'm not convinced that the verification process for the third-party site was strong enough to stop manipulation by a company which might have used it to engineer false credibility. It's also more significant to note that, despite a thorough investigation by the Insolvency Service, no evidence of any loans has been found.

Nationwide has said that Company B was a legitimate company, and it isn't the subject of investigations of this kind. It argues that any payments Mr B made to Company B shouldn't be considered under the CRM Code for that reason. However, those payments appear to have been made to Company B acting in a role as an intermediary. Certainly, the formal paperwork that accompanied these bonds was issued by Company A and, on other cases referred to this service, we've seen evidence of funds being transferred on from B to A.

For the avoidance of doubt, for the CRM Code to apply, it's neither necessary that the initial recipient of the customer's payment be an account owned by the fraudster nor that the person who received the funds is complicit in the fraud. The key matter is whether Mr B transferred funds to another person for what he believed was a legitimate purpose but was, in fact, fraudulent. In this instance, he believed that he was making a payment as part of a legitimate scheme but, in fact, he was (for the reasons I've set out above) being defrauded.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues.

Should Mr B be reimbursed under the CRM Code?

The remaining question then is whether a refund should be paid under the CRM Code. The Code requires signatories to refund customers who fall victim to APP scams, unless an exception to reimbursement applies. I'm not persuaded that an exception does apply here.

Overall, I think Mr B had a reasonable basis for believing the investment was legitimate. The investment company featured a polished website and accompanying materials, which likely put his mind at ease. Even though a return of more than 9% annually was above the usual rates at that time, I must take that into account along with other relevant details. For example, the company did not market this investment as guaranteed. The bond's brochure mentioned that investor capital is at risk and that "... *all investment is speculative and involves risk.*" While the returns promised were quite high, I don't think they were so outlandish as to immediately raise concerns, particularly when viewed alongside other indicators of potential legitimacy.

Overall, I'm persuaded that this was an APP scam, and that Nationwide should've refunded Mr B in line with the CRM Code

Redress

As there is an ongoing investigation by the liquidators, it's possible Mr B may recover some further funds in the future, through that process. 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 that process in respect of this investment before paying the award.

If Nationwide elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr B for his consideration and agreement.

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr B accepts my final decision, Nationwide Building Society needs to refund the payments he made in connection with the scam, less the returns he received. It should also add 8% simple interest per annum calculated to run from the date his claim was declined until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 June 2025.

James Kimmitt
Ombudsman