

Complaint

Mr M and Ms M are unhappy that Nationwide Building Society didn't reimburse them after they reported falling victim to fraud.

Background

In 2020, Mr M and Ms M were 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. They were told the rate of return for investors was a little under 10% per year. If they went ahead with the purchase, they were told they would make a payment to a different company (Company B). On 9 September 2020, they paid £6,000 in connection with a three-year bond. They did receive some monthly returns of £119.52, which was in line with what they expected.

They anticipated that investment being returned to them three-years later but that didn't happen. Despite their best efforts, they weren't able to contact the company that had sold them the investment. They concluded that they must have fallen victim to a scam and so they notified Nationwide.

Nationwide looked into things, but it didn't agree that they were victims of a scam. Nationwide concluded that Mr and Ms M had invested in a legitimate company that had, unfortunately, failed. Their only way of recovering any of their losses was through the insolvency process. It didn't think it needed to reimburse them under the terms of the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).

Mr and Ms M weren't happy with that response and so they referred their complaint to this service. It was looked at by an Investigator who took a different view to that of Nationwide. He concluded that they were the victims of a scam and that Nationwide ought to refund their losses under the CRM Code. Nationwide disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

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 (in this case, the 2017 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 this payment to fall within its scope, it must meet the relevant parts of the CRM Code's definition of an APP scam. Briefly summarised, Mr and Ms M need to have *"transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

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 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 maximising 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 and Ms M'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 they were the victims 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 and Ms M first raised their claim with Nationwide in May 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 them 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 and Ms M under those processes in respect of this investment before paying anything I might award to them 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 and Ms M under the provisions of the CRM Code.

Have Mr and Ms M been victims 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 and Ms M 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 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 and Ms M transferred were not used for the purpose for which they were intended and that they were 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 payments Mr and Ms M 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 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 and Ms M transferred funds to another person for what they believed was a legitimate purpose but was, in fact, fraudulent. In this instance, they believed that they were making a payment as part of a legitimate scheme but, in fact, they were (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.

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 any of the exceptions under the CRM Code are applicable here.

In particular, I'm satisfied that Mr and Ms M had a reasonable basis for believing the investment was legitimate. The investment company featured a polished website and accompanying materials, which likely put their minds at ease. Even though a return of nearly 10% 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 and Ms M in line with the CRM Code

Redress

As there is an ongoing investigation by the liquidators, it's possible Mr and Ms M may recover some further funds in the future. 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 and Ms M for their consideration and agreement.

Final decision

For the reasons I've explained above, I uphold this complaint.

If Mr and Ms M accept my final decision, Nationwide Building Society needs to refund the payment they made in connection with the scam, less the returns they received. It should also add 8% simple interest per annum calculated to run from the date their claim was declined until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr M to accept or reject my decision before 11 July 2025.

James Kimmitt
Ombudsman