

The complaint

Mr and Mrs R complain that Nationwide Building Society hasn't reimbursed money they say they lost to an art investment scam.

What happened

Between September and November 2022, Mr and Mrs R made payments totalling £41,352 from their Nationwide account to invest in art with company 'S'. In mid-2023 they contacted Nationwide as they said S had gone into receivership and made false and exaggerated promises to them regarding their investment.

Nationwide considered Mr and Mrs R's claim and a subsequent complaint from them, but it didn't uphold their case. It said that this was a civil dispute, rather than a scam. So it hadn't done anything wrong in relation to how it handled their payments and it wasn't required to reimburse them.

Mr and Mrs R brought their complaint to our service. Our Investigator considered the complaint but didn't uphold it. She also concluded that this was a civil dispute between Mr and Mrs R and S, rather than a scam. They disagreed, so the complaint 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 broad terms, the starting position at 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.

Nationwide is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code or "the Code"). This requires firms to reimburse customers of Authorised Push Payment (APP) scams in all but a limited number of circumstances. The Code goes on to define what it means by an APP scam. So if I am not persuaded that there was a scam, in line with the definition, then I will not have a basis under the Code to uphold this complaint.

The relevant definition of a scam for this case, in accordance with the CRM Code, is that the customer – Mr and Mrs R – transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The 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 doesn't cover

a genuine investment or a genuine business that subsequently failed. Or a situation involving something that may be considered a “bad bargain”.

Therefore, in order to determine whether Mr and Mrs R have been the victim of a scam as defined by the Code, I need to consider first, whether the purpose they intended for the payment was legitimate. I then need to consider whether the purposes they intended and S intended were broadly aligned. And if I find they weren't, whether this was the result of dishonest deception on the part of S.

Mr and Mrs R made multiple payments to S for art as well as exchanging another investment they held in wine for art prints. And they did with the intention of owning this art as an investment portfolio. For the purposes of this complaint and the Code, I can only consider the payments Mr and Mrs R made from Nationwide. But in doing so, I haven't seen anything to suggest that Mr and Mrs R didn't think this was a legitimate art investment.

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

After S went into liquidation, Mr and Mrs R were in contact with the warehouse where they understood their prints were being stored. I can see they were provided with a list of the prints held and they haven't suggested any prints were ultimately missing from this inventory. So the evidence we hold indicates that Mr and Mrs R are the owners of all the prints they paid for and so their money was used for the agreed purpose.

However, I understand concerns have been raised about the value of the prints and their actual resale value and potential, so Mr and Mrs R argue this was never a genuine investment and instead was a scam from the outset. However, ultimately, I have to place weight on the fact they made the payments to S on the understanding that it would purchase specific pieces of art to be held on their behalf, and the evidence indicates this is what happened.

Additionally, while allegations have been made that the prints owned aren't worth what Mr and Mrs R (and other investors) have paid, this remains a matter to be discussed at trial. We do know that there were contracts in place with the artists whose prints were sold. And that S had other key contracts for the steps in the service it said it was providing. For example, it had contracts with printers and contracts with storage firms. And as above, we understand Mr and Mrs R's art was being stored at one of these facilities. So this is indicative of S setting up and running the business in the way you'd expect.

We're also aware that the value of art is a subjective area. And that the nature of this industry means that mark-ups on print values aren't uncommon. Although I do recognise the mark-up indicated here is arguably higher than what is generally seen. However, viewing the information as a whole, as both Mr and Mrs R's and S's purpose for them making these payments did broadly align, I don't consider the evidence currently supports the conclusion that their payments were made as the result of an APP scam.

Mr and Mrs R have shared letters they received in late 2023 in relation to a buyer for their art. I accept the sender of these letters did have access to information about Mr and Mrs R's portfolio, but the evidence indicates these letters do not relate to a genuine buyer/sale. I haven't seen anything that proves a connection between S and this purported sale. And, more importantly, I can't see how these letters evidence dishonest intent by at S at the time Mr and Mrs R purchased their art.

I understand Mr and Mrs R have also referenced the proceedings of a recent court case

concerning S as further evidence it was most likely a scam firm.

However, the case considered in court related to the position of a freezing order that was in place over the company's assets. Not whether S procured payments for *fraudulent* purposes. In order for a freezing order to be put in place, the possibility of fraud had to only be arguable, not more likely than not, on the balance of probabilities. And while the judge did make references to the *possibility* that S may have had the intention to defraud customers, they were also very clear that this was not within the remit of the court case taking place and that this would need to be considered in a trial.

Legal proceedings may uncover new evidence or change the basis on which this case has been considered up until now. However, I have to decide the case on the facts and information currently available to me. Based on the evidence currently available, I'm not able to conclude there is sufficiently persuasive evidence that shows Nationwide was wrong in saying this was a civil dispute and therefore that the payments aren't covered by the CRM Code.

If new material information does come to light at a later date, then a new complaint can be made to Nationwide. But I'm satisfied, based on the available evidence that I have seen and been presented with at this time, that this is a civil dispute.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs R's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 21 March 2025.

Amy Osborne
Ombudsman