

Complaint

Mrs H is unhappy that Nationwide Building Society didn't reimburse her after she told it she'd fallen victim to a scam.

Background

In 2023, Mrs H made an investment in a company that I'll refer to as Company A. She says she wasn't actively seeking investment opportunities. This one was promoted to her by someone she knew that I'll refer to as L. L was a business coach who Mrs H had known for several years through newsletters and a previous business relationship. Because of this connection, she trusted L when she invited her to attend a large online meeting about the investment opportunity.

Company A said that it would invest client money using Contracts for Difference (CFDs). CFDs are a type of derivative that allow traders to profit from price movements without taking ownership of the underlying asset. Company A claimed it would use this tool to take advantage of fluctuations in currency prices. In doing so, it would generate high monthly returns for investors.

Mrs H recalls that during the group calls, it was emphasised that the scheme was being run by professionals and was presented as a safe investment. Following the meetings, most of L's communications were via WhatsApp, through which she sent Mrs H links to a brochure and a projection sheet. Mrs H remembers that the projected returns were stated to be between 8% and 15% per month, but that this was dependent on favourable market conditions. She also recalls that Company A had a website. She found this to generally appear professional. She also checked whether or not it was subject to regulation and took a screenshot of a page on its website saying that it was regulated in Luxembourg by the Commission de Surveillance du Secteur Financier (CSSF).

Around the time she was considering whether to invest, a face-to-face meeting took place between investors and the directors of Company A. Mrs H couldn't attend but heard positive feedback from those who did. She says she checked both the Financial Conduct Authority (FCA) and CSSF websites and found no issues. She also found entries for L and her company on the FCA register. She remembers hearing from other investors who said they had withdrawn profits, though she isn't sure exactly when (and it may have been after she invested).

On 16 November 2022, Mrs H invested £10,000 from her Nationwide account. She believed this would be transferred to Company A. She had received an email from L explaining that the funds would be routed through a different individual due to delays in setting up new bank accounts. She recalls being told by L (either explicitly or implicitly) not to tell her bank that the payment was for an investment, as banks tend to question such transactions. She also made a further payment in February 2023 from an account held by a different business she runs with a different bank.

Mrs H never received any returns on her investment. A few months later, she read a report suggesting that Company A had ceased trading. She then heard rumours indicating it had

been a scam. She reported the matter to Nationwide. It didn't agree to uphold her complaint. It said it was premature to say that she had fallen victim to a scam. Company A was subject to investigations and, until those concluded, it was just as likely that Mrs H had simply been the victim of a failed investment.

Mrs H wasn't happy with that response and so she referred her complaint to this service. An Investigator reviewed the complaint and decided to uphold it. Nationwide disagreed with that outcome, so the case has been passed to me to make 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, in accordance with the Payment Services Regulations (in this case, the 2017 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 to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

Can Nationwide delay making a decision under the CRM code?

Nationwide has argued that the payment Mrs H made is the subject of an ongoing investigation and it is inappropriate to conclude whether she is the victim of a scam before the conclusion of that investigation. I've considered its argument on that point carefully, but I don't agree.

The CRM code says firms should make a decision as to whether to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

I've considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing. There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues based on 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 any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown Prosecution Service would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

In order to determine Mrs H's complaint, I must ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that she 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 Mrs H first raised her claim with Nationwide in early 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 Mrs H 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 also aware the above processes might result in some recoveries for Company A's investors. 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 Mrs H under those processes in respect of this investment before paying anything I might award to her on this complaint.

For reasons I'll explain in more detail below, I don't think it's necessary to wait for the outcome of the FCA investigation for me fairly to reach a decision on whether Nationwide should reimburse Mrs H under the provisions of the CRM Code. I'm satisfied there is already convincing evidence to demonstrate on the balance of probabilities that those who invested with the trading company were dishonestly deceived about the purpose of the payments they were making and that Mrs H was the victim of a scam.

Has Mrs H been the victim of a scam, as defined in the CRM code?

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent. The CRM 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.

To decide whether this definition has been met, I need to consider whether the purpose for which Mrs H made the payment was legitimate and whether there was alignment between her purpose in making the payment and Company A's purpose in procuring it. Finally, if those purposes weren't aligned, was that the result of dishonest deception on the part of the company?

I'm satisfied Mrs H made the payment here with the intention of investing with Company A. I think she thought her funds would be used to trade in foreign currency, and that she would receive returns on her investment. I haven't seen anything to suggest that Mrs H didn't think this was legitimate.

However, the evidence I've seen suggests the company didn't intend to act in line with the purpose for the payments it had agreed with Mrs H. The company needed to be regulated by the UK financial regulator, the FCA, to operate an investment of this type within the UK. Mrs H says she was told the trading company was regulated by the financial regulator in Luxembourg, the CSSF, and was in the process of becoming regulated by the FCA. And from what I've seen of the marketing material potential investors were shown, the trading company said on a number of occasions that it either was, or was in the process of becoming, regulated by the CSSF. But the CSSF has confirmed it was not in contact with the trading company, and the company was not supervised by it. So this strongly suggests the trading company was dishonestly misleading investors about the regulatory status of the company.

In March and April 2023 respectively, both the CSSF and the FCA issued warnings about the trading company. The CSSF warned that the company was pretending to be registered and supervised by it, but that this wasn't the case. And the FCA warned that all companies must be authorised by it if they offer, promote or sell financial products in the UK but that the trading company was not authorised and was targeting people in the UK.

In a number of its emails to Mrs H, and its marketing materials, the trading company also claimed to be partnered with an FCA regulated broker it held a trading account with. But this broker has confirmed that it doesn't have any relationship with the trading company, or with either of the individuals involved in running the company. So as the trading company told investors their funds were immediately transferred to trading accounts with this broker, this strongly suggests it was dishonestly deceiving investors about the payments they were making. Funds sent to the trading company weren't used for the specific purpose of trading in foreign exchange via the regulated broker – which is what investors thought was happening with their funds.

While some funds sent to the trading company were sent to another foreign exchange trading platform, those funds weren't held and traded on a platform that was regulated in the UK by the FCA – as investors were told their funds would be. The funds sent to this other trading platform also didn't benefit from FSCS protection – as investors were also led to believe. And it is impossible to say whether any trading the company carried out on this other platform was done on behalf of investors, or was solely for the benefit of the trading company itself.

Investors in the trading company were also told all the funds they sent to the company would be immediately moved to the FCA regulated broker and available for trading. However, from what I've seen of the accounts the funds were sent to, no funds were sent to the FCA regulated broker the trading company mentioned and only around 60% of the funds were sent to the other trading platform. This means a significant proportion of the funds the trading company received weren't used for trading in foreign exchange – contrary to what investors were told.

The funds that weren't used for trading in foreign exchange appear to have been used for a number of other purposes, including transfers to other accounts held by individuals involved in running the trading company and their family members, credit card repayments, luxury vehicle purchases, flights, hotels, and gambling.

Of the funds that were sent to the other trading platform, the trading company only appears to have withdrawn around a third of the amount that was then paid to investors as returns. This raises significant questions about how the remaining returns that were paid to investors were funded, and I think strongly suggests deposits from later investors were being used to pay returns and withdrawals of earlier investors. Some of the funds received into the trading company's accounts from investors were also sent to a cryptocurrency exchange. It's clear from these examples that funds weren't being used in line with what investors had been told.

Overall, I think the available evidence shows the trading company wasn't acting in line with the features of the investment it had led Mrs H to believe she was making. The purpose for which the company procured that payment wasn't aligned with the purpose Mrs H intended for it.

Given the incorrect information given out by the trading company, particularly about its regulatory status and its relationship with the broker, I also think the discrepancy in the alignment of the payment purposes between it and Mrs H was the result of dishonest deception on the part of the company.

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. As I've explained above, there is significant evidence about the actual activity carried out by the trading company already available. While the FCA's investigation is still ongoing, there is no certainty as to when it will be concluded and what, if any, prosecutions may be brought in future, nor what, if any, new light it would shed on the evidence and issues I've discussed.

In summary, I'm satisfied that the circumstances here meet the definition of a scam set out in the CRM Code.

Should Mrs H be refunded under the CRM Code?

The CRM Code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mrs H fell victim to, in all but a limited number of circumstances. It is for the firm to establish that one of the exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate¹

Nationwide hasn't provided evidence of any warnings Mrs H was shown when she made this payment or argued that she ignored an effective warning. As a result, I'm satisfied that exception doesn't apply here.

I've also considered whether she acted reasonably when making these payments, or whether any warning signs ought to have reasonably made them aware that this wasn't a genuine investment. On balance, I'm satisfied that she did make this payment with a reasonable basis for believing that the investment was a legitimate one and I'll explain why

The opportunity was introduced to her by L. L was someone she had known professionally for several years and whom she trusted. She was also told that L's own family had invested in the scheme, which I think would've been persuasive to her.

She attended a large online meeting which presented the investment as professionally managed and safe. The seminar was attended by many people, which gave the impression that the opportunity was credible and widely trusted. I think it's reasonable that being introduced to the trading company by someone a family member had met independently, attending such a large event and meeting the individuals involved in-person will have made the investment seem genuine to Mrs H.

The marketing material was professional and convincing, and while the returns were generous, they may have seemed believable to someone without much knowledge or experience in investing. I think it's reasonable that this kind of contact and communication will have reassured Mrs H that the trading company was genuine.

¹ There are further exceptions within the CRM code, but these don't apply here.

She checked both the website of the FCA and CSSF websites and found no cause for concern. She also saw entries for L and her business on the FCA register. She also had reason to believe others had successfully withdrawn profits from their investments and the fact that Company A's directors were willing to meet prospective investors face-to-face strengthened her confidence.

Mrs H says she was told (either explicitly or implicitly) not to tell the bank the payment was for an investment. This might have been cause for concern. It sounds like she was told by L that she should keep the real purpose of the payment to herself because banks are uncomfortable with non-mainstream investments. I think she was persuaded that she should describe the payment in this way to avoid delays in processing and I think that was consistent with the way the investment scheme had been presented.

Taking all of this into account, I think Mrs H had done enough to satisfy herself that the investment was genuine. She carried out checks, relied on a trusted relationship, and reviewed materials that appeared to lend credibility to the investment. In my view, she had a reasonable basis for believing the payment was in connection with a legitimate investment.

Overall, for the reasons I've set out above, I think it is fair for our service to assess Mrs H's complaint based on the evidence that is currently available. And having done, I think the payments Mrs H made here are covered by the CRM code and Nationwide hasn't established that any of the exclusions to reimbursement apply. For that reason, I think Nationwide should refund the money Mrs H lost as a result of this scam.

Redress

As there is an ongoing investigation into the trading company by the FCA, it's possible Mrs H may recover some further funds in the future, through that process. 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 £10,000 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 Mrs H for her consideration and agreement.

As Mrs H have been deprived of access to her money for some time, I think it would also be fair for Nationwide to pay them interest on this refund. But as much of the information and evidence I've relied on to come to this decision wasn't available to Nationwide when it was first assessing Mrs H's claim, I don't think it would be fair to require Nationwide to pay interest from the date it initially responded to it. Instead, I think it would be fair to require Nationwide to pay interest from the date of our investigator's opinion of 20 January 2025. I think this is a fair approximation for when the information and evidence to fairly assess Mrs H's claim was available.

Final decision

For the reasons I've explained above, I uphold this complaint. Nationwide should refund the payment Mrs H made in connection with the scam. It should also add 8% simple interest per annum calculated to run from 20 January 2025 until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 18 July 2025.

James Kimmitt
Ombudsman