

The complaint

Miss B complains that Nationwide Building Society hasn't reimbursed her following an authorised push payment ('APP') investment scam she fell victim to.

In bringing her complaint, Miss B has used the services of a professional representative. Within this decision, for ease of reading, I will refer solely to Miss B.

What happened

The background to this complaint is well known to both parties and was laid out in detail within our Investigator's view, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

In or around July 2022, through her partner, Miss B heard about an investment opportunity, regarding a company that I'll refer to as 'V'. The opportunity had been shared with Miss B's partner, by an individual who he had previously attended courses with. The individual said they were a FCA regulated sponsor and had sent marketing information about the opportunity, which they said was with a regulated company.

Miss B has said she and her partner also reviewed Companies House, websites, the profiles of the individuals associated with the company and watched a webinar. They were also aware that the company held face to face meetings with investors. Believing everything to be genuine, Miss B decided to proceed with the investment and between 29 July 2022 and 8 March 2023, Miss B sent four payments from her Nationwide account, totalling £15,000. A breakdown of those payments is listed below;

29 July 2022	£5,000
15 December 2022	£5,000
7 March 2023	£500
8 March 2023	£4,500

Miss B became concerned after she'd been made aware of a Financial Conduct Authority ("FCA") warning about V, and when investors were blocked from the investment portal. Ultimately Miss B wasn't able to retrieve any of the funds or profits she thought she had made from V.

Miss B, through her representative's, raised the matter with Nationwide. Nationwide looked into things, with consideration to the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). It issued its final response to Miss B, in May 2024, not upholding the complaint. In summary it said as V and its directors were under investigation by the FCA, it had ringfenced the case. It made reference to R3(1)(c) of the CRM Code, explaining that it could wait for the outcome of the investigation, before making a decision.

Unhappy with Nationwide's response, Miss B then brought her complaint to this service. One of our Investigator's looked into things and thought the complaint should be upheld. In summary this was because she thought there was already sufficient evidence available for

Nationwide to reach a conclusion, under the CRM Code and the outcome of the FCA's investigation wasn't likely to impact that.

Overall, it was our Investigator's view that on the balance of probabilities V dishonestly deceived its investors and that Miss B was the victim of an APP scam. She considered whether Miss B had a reasonable basis for belief when making the payments and her view was that she did. She also didn't think Nationwide had been able to demonstrate that Miss B had ignored an effective warning. So, she recommended that Nationwide refund Miss B the money she lost, along with interest.

Miss B accepted our Investigator's view. Nationwide responded and asked for some evidence of what our Investigator had relied on in reaching her view. This was provided and Nationwide responded to say it was unable to provide a response to the view, due to ongoing discussions.

As an agreement hasn't been reached the complaint has been passed over to me for a 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 (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 was a signatory to the CRM Code, which I have mentioned above. 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.

The main point of dispute here is whether V was operating as a scam or not. Nationwide is relying on R3(1)(c) of the CRM Code to defer making a decision on this point. R3(1)(c) says:

"...If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision."

So, I have 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.

Can Nationwide delay making a decision under the CRM code?

Nationwide has argued that the payment Miss B 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. 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 maybe that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine Miss 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 Miss B 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.

From what I've seen Miss B first raised her claim with Nationwide in October 2023 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 Miss 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 also aware the above processes might result in some recoveries for V'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 Miss B 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 Miss B 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 Miss B was the victim of a scam.

Has Miss B 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 Miss B made the payment was legitimate and whether there was alignment between her purpose in making the payment and V'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 Miss B made the payment here with the intention of investing with V. I think she thought her funds would be used to trade in Forex, stocks and shares, and that she would receive returns on her investment. I haven't seen anything to suggest that Miss B didn't think this was legitimate.

It's evident that V had some features that gave it the impression of operating legitimately. There are identifiable individuals associated with V who held in-person and online events to promote the investment. And many people who lost money had been introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

There is also evidence that some of the money that was received by the founding individuals at V did end up with a foreign exchange ('Forex') platform (which wasn't FCA regulated but was part of a group of companies – of which one was FCA regulated). It also appears some funds sent to V's bank account were converted into cryptocurrency and sent to the Forex platform.

However, I think that is countered by persuasive evidence that V was operating a scam. I say that because;

- V's claims of being, at least in the process of, regulated with relevant bodies (FCA in the UK, CSSF in Luxembourg) are false.
- V's account provider has shown that when V applied for accounts it misled it (falsely stating that it was partnering with a FCA authorised trading exchange and that it was regulated).
- Only around 60% of investor funds sent (to the two founders personal accounts) was potentially used for the intended purpose of Forex trading (Miss B sent funds with the understanding they would wholly be invested in Forex trading), c.40% wasn't invested and 0% was sent to the FCA trading platform investors were told was being used.
- Of the investors' funds that were sent to V's business account, these were either sent to a cryptocurrency exchange platform or paid to other investors as withdrawals. Investors were led to believe they were investing with a regulated entity and that their funds would be deposited in a regulated trading account. It wasn't advertised to investors that their funds would be moved/invested into unregulated cryptocurrency. Furthermore, approximately 20% of the funds moved to the cryptocurrency exchange platform weren't subsequently forwarded to the Forex trading account.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- The returns from the Forex platform are significantly less than the returns paid to investors, suggesting returns were funded using other investors' money and weren't profits made from investing.

When considering all of the above, on the balance of probabilities, I'm satisfied that the money Miss B sent to V was not used for its intended purpose. The evidence suggests that Miss B wasn't involved in a failed investment, but a scam.

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.

So, as I'm satisfied Miss B has most likely been the victim of an APP scam, I must now consider whether Miss B should be reimbursed or not under the CRM Code.

Should Miss B 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 Miss B 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 legitimate

And importantly, when assessing whether it can establish these things, Nationwide must consider whether they would have had a 'material effect on preventing the APP scam.

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

- Miss B was introduced to V by her partner, who had previously attended courses with the person that introduced the opportunity. So, I can understand how hearing about V through a trusted source, who they believed to be regulated, would have given her assurances that she was dealing with a genuine investment company.
- Ahead of investing, Miss B has said she carried out her due diligence, including checking companies house, reviewing the website and viewing a webinar. Alongside this, Miss B received invites to one-to-one meetings and received professional looking documentation, which included evidence of V being aligned with a FCA regulated broker – all of which I am persuaded would have further reassured Miss B that this was a legitimate opportunity.
- Even though the returns Miss B was told she could expect, were above what you would typically expect to see. When taking into account the other relevant factors, such as being aware that others had achieved those returns, I don't think they were so outlandish as to immediately raise concerns, particularly when viewed alongside other indicators of potential legitimacy.
- Additionally, there were other elements of this scam that were particularly persuasive. For example, one of the founders liaising with clients. V being readily contactable, Miss B receiving regular updates from the company, as well as weekly trade updates.

All things considered, when thinking about the above and the wider sophistication of this scam, so the account opening process, V's website, the client portal and the ability to track supposed investments, I can further understand why Miss B felt the investment was a

genuine one at the time. I don't think it is evident that Miss B has made these payments with a complete disregard for risk, and I'm persuaded her decision to send the payments she did wasn't an unreasonable one.

Nationwide hasn't said that an effective warning was ignored when Miss B made her payment. But Nationwide has provided us with details of the warning that would have been shown. I agree with our Investigator and for the same reasons, that when considering the principles of the CRM Code I don't think the warning could be considered effective.

But in any event, I'm mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a 'material effect on preventing the APP scam'. Here, for reasons explained above, I'm satisfied that Miss B had no reason to believe that V wasn't a genuine investment company at the time – so even if Miss B had been presented with a better warning, I'm persuaded it wouldn't have had a material effect on preventing the scam, such was her belief in V and that things were legitimate. Indeed, within Nationwide's own submissions to this service, it recognises that the warning selected at the time would not have identified this as a scam and wouldn't have been sufficient to protect Miss B, given the complexity of the scam. So, I do not think an exception to reimbursement can be applied for this reason.

In summary, I do not consider it necessary to await the outcome of the FCA investigations into V and any subsequent proceedings. I am satisfied, based on the evidence available, that Miss B was more likely than not the victim of an APP scam. And her fraud claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied Nationwide should reimburse Miss B under the provisions of the CRM Code. And Nationwide is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Miss B under the processes relating to the FCA investigation and any potential compensation that may be returned to victims.

In relation to compensatory interest, I think it should be paid from the date our Investigator gave their view of this complaint (22 November 2024). I'm satisfied that the information disclosed in that view was sufficient for Nationwide to conclude that Miss B had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations. Miss B's representatives have been made aware of the approach to interest on this case and have accepted it.

Putting things right

For these reasons, I think that a fair and reasonable outcome would be for Nationwide Building Society to;

- Refund Miss B the money she lost, being £15,000.
- Pay 8% interest on that amount, from 22 November 2024 to the date of settlement.

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 1 August 2025.

Stephen Wise
Ombudsman