

## **The complaint**

Mr B complains that Nationwide Building Society ('Nationwide') hasn't reimbursed the losses suffered as a result of a scam.

He's represented in this complaint. To keep things simple, I'll refer to Mr B throughout this decision.

## **What happened**

The background is known to both parties, so I won't repeat all the details.

In summary, in November 2022, Mr B made a payment of £10,000 for investment with what he thought was a genuine company ('V'). He came to know about V through his Wife (Mrs B) and her brothers who'd themselves invested. He also says he'd met one of V's directors ('J') through a friend of Mrs B, and that he was aware of J's background as a successful investor.

Before making the payment, he spoke directly with J and understood the money in the fund would be invested in forex, cryptocurrency, stocks and shares, with weekly returns of 2-4%. He was informed V was FCA-registered and this reassured him it was a safe investment. As instructed, he made the payment to an individual's ('C') account. He understood C was J's business partner. He was then given confirmation that the funds had been deposited with V.

Mr B complained to Nationwide saying he'd been the victim of a scam and was unable to withdraw funds from the investment. Nationwide looked into things, with reference to the Lending Standards Board Contingent Reimbursement Model Code ('CRM Code'). In May 2024, it told Mr B that as V and C were both under investigation by the FCA, its outcome was on hold. It maintained that position when the matter was referred to our Service.

Our Investigator considered the complaint and upheld it. Briefly, he thought there was already sufficient evidence available for Nationwide to reach a conclusion under the CRM Code and any outcome of the FCA's investigation wasn't likely to impact that. He thought that, on balance, V dishonestly deceived its investors and Mr B was the victim of an APP scam. He found Mr B had a reasonable basis for belief when making the payment and he didn't think Nationwide had demonstrated Mr B had ignored an effective warning. He concluded that Nationwide should refund Mr B in full, with interest.

Mr B accepted that outcome. Nationwide didn't. It asked that the outcome be postponed pending the results of the FCA investigation.

As the matter couldn't be resolved informally, it's been passed to me to decide.

## **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.

Having done so, I've decided to uphold it for similar reasons as the Investigator.

It's not in dispute that Mr B authorised the payment in question. And so, in line with the Payment Services Regulations (2017), the starting point at law is that he's responsible for the losses in the first instance. That's true even if the payment was made as part of a scam.

But Nationwide was a signatory to the CRM Code which was in place to see victims of scams reimbursed in most circumstances. The Code doesn't apply to all payments made by a customer. Importantly, it wouldn't apply where a customer had paid a legitimate company that had failed and so was unable to provide the goods/services as intended.

Nationwide hasn't said if it thinks V was operating a scam or not. It says it's too early to be able to say for sure especially as there are ongoing statutory body investigations which haven't concluded and where charges are yet to be brought. Here, Nationwide is seeking to rely on provision 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'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.

*Is it appropriate to determine this complaint now?*

I accept 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. It may be possible to reach conclusions on the key issues on the information already available. And it may be that any ongoing investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. So, to decide Mr B's complaint, I must ask myself whether, on balance, the available evidence indicates it's more likely than not that he was the victim of a scam, not a failed investment. While I wouldn't proceed to decision if I consider fairness to the parties means I shouldn't, I'm also mindful Mr B raised his claim with Nationwide in 2024 and that this Service was set up to resolve complaints quickly and with minimum formality.

In other words, I don't think delaying giving Mr B's answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I don't think it'd be fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available, a postponement is likely to help significantly when it comes to deciding the issues.

I'm also aware that any ongoing proceedings might result in some recoveries for V's creditors/investors. And, to avoid the risk of double recovery, I think Nationwide is 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 award on this complaint.

But, for the reasons below, I don't think it's necessary to wait for me fairly to reach a decision on whether Nationwide should reimburse Mr B under the provisions of the CRM Code. I'm satisfied there's already enough evidence to show, on balance, that those who invested were dishonestly deceived about the purpose of the payments they were making – and so that Mr B was the victim of a scam.

*Has Mr 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 which were in fact

fraudulent. The CRM code also says it doesn't apply to private civil disputes, such as where a customer paid a legitimate supplier for goods or services but didn't receive them, or they're defective in some way, or the customer is otherwise dissatisfied with the supplier.

To decide if this definition has been met, I need to consider whether the purpose for which Mr B made the payment was legitimate and whether there was alignment between his purpose in making the payment and V's purpose in procuring it. And then, if those purposes weren't aligned, whether that was as a result of dishonest deception by V.

I'm satisfied Mr B made the payment here with the intention of investing with V. He thought the funds would be used to trade in forex, stocks and shares with returns on the investment. I haven't seen anything to suggest he didn't think this was legitimate.

I can accept 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 were introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

There's also evidence that some of the money received by V's founding individuals 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). And it seems some funds sent to V's bank account were converted into cryptocurrency and sent to the Forex platform. But I think all this is countered by the persuasive other evidence that V was operating a scam. For example:

- V claimed to be working with both the FCA and the CSSF in Luxembourg in pursuit of becoming a regulated company. These claims have proven to be false. It's my view such statements were made to try and lure victims in by trying to show an air of legitimacy.
- 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).
- Client funds were meant to be moved and held in the account of a partner firm regulated with the FCA. This didn't happen. And that funds were sent to the personal accounts of V's directors shows an improper method of money management – one that was at odds with the customers' intentions.
- Significant sums of client money were moved into cryptocurrency exchanges which was not the purpose of the investment and not something investors knew about. Some funds were also used to make payments direct to investors, indicating a Ponzi scheme.
- There's no evidence that V was able to deliver the kind of returns promised to investors. Where profits do potentially appear to have been generated through forex trading, these are significantly less than the amounts paid out to investors – showing that client money was being used to pay 'returns' to other investors.

In view of the above, and on balance, I'm satisfied the money Mr B sent wasn't used for its intended purpose. The evidence suggests he wasn't involved in a failed investment, but a scam. I've explained why I'd only postpone a decision if I think that fairness to the parties demands that I should do so. As above, there's already significant evidence about the actual activity that was carried out. Given the evidence already available, I don't consider it likely that postponing my decision would help significantly in deciding the issues. And while the FCA's investigation is ongoing, there's no certainty as to when it'll conclude; what, if any,

prosecutions may be brought in future; nor if it'd shed new light on the things I've set out.

As I'm satisfied Mr B was likely the victim of an APP scam, I've considered if Nationwide should reimburse the funds under the CRM Code.

*Should Nationwide reimburse the funds under the CRM Code?*

The CRM Code requires firms to reimburse customers who have been the victim of APP scams in all but a limited number of circumstances. It's for Nationwide 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.

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 thought carefully about whether Mr B acted reasonably when making the payment, or whether any warning signs ought to have reasonably made him aware this wasn't a genuine investment. And, on balance, I'm satisfied he made the payment with a reasonable basis for believing that the 'investment' was a legitimate one.

Mr B was introduced to V through personal recommendations by family members who had previously invested. He's explained he'd previously met J, through a friend of his Wife; that he was aware of J's background as a successful investor; and that he spoke directly with J before investing to establish how things would work and the likely returns. I can understand why an introduction by family (who had put their own money in) would have given him some confidence. I can appreciate why he placed some weight on his knowledge of J's successes and took some comfort knowing he'd been dealing with one of the founders and not some "random" person. I can also understand why access to V's portal, which provided the ability to track the supposed investment and being informed the investment would be managed by a FCA-regulated broker would have provided some reassurance.

I accept some of the claims made by V about the returns it could generate seem unlikely. But weighing this up alongside the others factors I've set out and the wider sophisticated aspects of the scam, I don't think it was unreasonable for Mr B to believe the opportunity was genuine. I'm also mindful a FCA investigation is ongoing, and Nationwide itself doesn't think there's sufficient evidence to determine V was a scam. In this scenario, it's unlikely I'd find Mr B didn't have a reasonable basis for belief. I'll add that looking at the file submissions that have been provided it seems Nationwide too was sympathetic to this position.

Nationwide hasn't said that an effective warning was ignored when Mr B made the payment. It has provided details of a warning it says would have been shown at the time. But, when considering the principles of the CRM Code, I don't think the warning could be considered effective, for the same reasons as those given by the Investigator. In any event, the CRM Code explains that a firm, in assessing if 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'. Overall, I'm satisfied Mr B had little reason to believe V wasn't a genuine investment at the time. Even if he'd been presented with a better warning, it's unlikely it would have had a material effect on preventing the scam. So I don't think an exception to reimbursement can be applied for this reason.

To summarise, I don't consider it necessary to await the outcome of the FCA investigations into V and any subsequent proceedings. I'm satisfied, based on the evidence available, that Mr B was more likely than not the victim of an APP scam. And his claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply – and so, that Nationwide should reimburse Mr B under the provisions of the CRM Code. As before, Nationwide is entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr B under the processes relating to the FCA investigation and any potential compensation that may be returned to him.

As for compensatory interest, I think it should be paid from the date our Investigator gave his outcome on this complaint. I'm satisfied the information in his outcome was enough for Nationwide to find Mr B had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations.

### **Putting things right**

To put things right, I direct Nationwide Building Society to:

- Refund Mr B the disputed payment in full (£10,000).
- Pay 8% interest on that amount from the date of the Investigator's outcome to the date of settlement.
- As part of the money that was lost was Mrs B's share of the 'investment' (and she's an interested party in this complaint), it'll be for Mr B to settle this with Mrs B directly.

### **My final decision**

For the reasons I've given, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 October 2025.

Thomas Cardia  
**Ombudsman**