

The complaint

Mrs O and Mr R are unhappy that Nationwide Building Society (“Nationwide”) won’t refund the money they lost to an investment scam.

What happened

The background to this complaint is well known to both parties so I won’t repeat everything in detail again here. However, in summary, Mrs O and Mr R believe they have been the victims of a scam. In late 2020, they sent two payments amounting to £20,000 for what they believed was a genuine investment opportunity with a company I will refer to as M. The payments to M were made via a company I will refer to as N – an FCA regulated intermediary.

Mrs O and Mr R did receive a small amount of returns on their investment but the returns soon stopped and Mrs O and Mr R have been unable to contact anyone at M. Mrs O and Mr R now believe they’ve been the victims of a scam and would like Nationwide to reimburse them in full.

Nationwide has declined to offer Mrs O and Mr R a refund of the amount lost. It said it didn’t think the payments they made were covered by the Lending Standard Board’s Contingent Reimbursement Model Code (“the CRM Code”) because the payments initially went to N. It also said it thought Mrs O and Mr R’s circumstances most likely amounted to a civil dispute between them and M, rather than a scam that Nationwide should become involved in now.

Unhappy with what Nationwide said, Mrs O and Mr R brought their complaint to this service and one of our investigators looked into things.

Our investigator upheld the complaint in full. They were persuaded that Mrs O and Mr R had likely been the victims of a scam and the payments were covered by the CRM Code. Because of this, the investigator recommended that Nationwide refund Mrs O and Mr R in full.

Mrs O and Mr R agreed with our investigators opinion but Nationwide did not. And, as an informal agreement could not be reached, the case 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 deciding what’s fair and reasonable, I’m required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position in 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.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an APP scam, as set out in the code, is met.

Are Mrs O and Mr R's payments covered by the provisions of the CRM Code?

Nationwide initially said it believed Mrs O and Mr R's circumstances more than likely amounted to a civil dispute, rather than a scam. And for this reason, it didn't think the payments made to M were covered by the provisions of the CRM Code. It later added that it also felt that the fact Mrs O and Mr R's payments were initially paid to N (before the money was passed to M) also meant that the provisions of the CRM Code didn't apply.

I've carefully considered the arguments put forward by Nationwide and I don't agree. I'm not persuaded that Mrs O and Mr R initially transferring the funds to N before they were moved on to M means the provisions of the Code don't apply in this case.

The CRM Code does not require the initial recipient of a payment to be an account owned by and for the benefit of the fraudster. Neither does it require that the account be controlled by a party which is complicit in the fraud. Instead, the relevant test is whether an APP scam has taken place.

The CRM Code, defines an APP scam as:

"...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

In this case, I think the payments meet the definition of an APP scam under DS1(2)(a)(ii) in that Mrs O and Mr R transferred their funds to another person (N) for what they believed was a legitimate purpose but was in fact fraudulent. Specifically, Mrs O and Mr R believed they were making payments as part of a legitimate scheme but, in fact, they being defrauded.

If the CRM Code required that the first recipient of scam funds also be the party that benefits from the fraud, a great many claims would be excluded. I say this because many first-generation accounts are not controlled by the fraudster themselves. The use of money mules (complicit or innocent) is well-known and the CRM Code does not require the sending firm to make an assessment of whether the recipient account holder was complicit in the fraud or not. Instead, I need to consider whether the funds were effectively under the control of the fraudster at the point they arrived at N.

This service has seen evidence that funds that credited N's account were passed to M within a few days (seemingly minus a small fee retained by N). Given what is known of the relationship between N and M, it's very likely that this subsequent transaction was carried

out under a pre-existing agreement. More importantly, Mrs O and Mr R do not seem to have had a customer relationship with N, the funds do not appear to credit an account in their name and they had no significant interactions with N.

I'm satisfied N was acting on behalf of M and not Mrs O and Mr R and they had no reasonable way of preventing the onward transfer of funds to M. It follows then that the money was both out of Mrs O and Mr R's control at the point it arrived at N and effectively under the control of M.

Consequently, the circumstances in this case are not significantly different from a typical scam scenario - where funds are transferred into an account which is unlikely to be owned by the fraudster, but the recipient has agreed to pass funds on to an ultimate beneficiary. That means that the payments Mrs O and Mr R made are capable of being covered by the provisions of the CRM Code. The Lending Standards Boards' consultation makes clear that certain multistage frauds are within the scope of the Code. But, for the reasons I've already outlined, in this case there's no need to consider the payment from N to M (the onward transmission of funds) as the funds were effectively under the control of M once they reached N.

Nationwide has also argued that Mrs O and Mr R's circumstances amount to a civil dispute, rather than a scam – and the provisions of the CRM Code wouldn't cover a genuine investment that has subsequently failed.

To decide whether Mrs O and Mr R have been the victims of an APP scam as defined in the CRM Code (above) I have considered:

- The purpose of the payments and whether Mrs O and Mr R thought this purpose was legitimate.
- The purpose the recipient (M) had in mind at the time of the payments, and whether this broadly aligned with what Mrs O and Mr R understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

From the evidence I have seen, I'm satisfied Mrs O and Mr R intended to invest in M. They understood that M would use the funds to provide short term loans to business customers and this would result in them receiving returns. I haven't seen anything to suggest Mrs O and Mr R didn't consider this to be a legitimate purpose.

I've then gone on to consider the purpose M had in mind at the time it took the payments. After careful consideration, I'm not satisfied M intended to act in line with the purpose agreed with Mrs O and Mr R. I will explain why in more detail below.

- I have reviewed M's records on Companies House. It doesn't appear to have posted accounts since 2021 and doesn't appear to have been audited. The nature of M's business was listed as development of building projects and, whilst the listing had also included activities auxiliary to financial intermediation by the time Mrs O and Mr R made their investment, this doesn't appear to be in line with the investment purposes Mrs O and Mr R were led to believe they were investing in.
- The FCA provided a warning in October 2021 about M providing financial services when it was not authorised to. Mrs O and Mr R invested before this date. Z (an organisation that took over M in 2022) told investors the FCA warning was due to clone companies impersonating M - which doesn't appear to be true. And there's no current evidence to suggest a clone company was in operation as Z claimed.

Overall, I've not been provided with any evidence to show that M was operating in line with the way it described, and agreed with, its investors prior to their investment.

So based on the evidence I have available to me, on balance, I'm satisfied that it's more likely than not that M was operating a scam and therefore the payments Mrs O and Mr R made are covered by the provisions of the CRM Code.

Should Mrs O and Mr R be reimbursed under the CRM Code?

As Nationwide was a signatory to the CRM Code at the time the payments under discussion here were made, it was required to reimburse victims of APP scams like this one unless it could establish that it could rely on one of the listed exceptions set out in the CRM Code applied.

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

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Nationwide to establish that an exception to reimbursement applies. And in this particular case, Nationwide didn't respond with any arguments in this regard to our investigator's opinion. So, overall, I'm not persuaded that it has demonstrated that any of the listed exceptions can fairly be applied.

For the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions apply.

Our investigator outlined the reasons why she felt Mrs O and Mr R had a reasonable basis for believing this was a genuine investment opportunity and I agree - broadly for the same reasons. Mrs O and Mr R had been actively looking for investment opportunities and the documentation they received from M appeared professional and convincing. I don't think the indicative rates of return suggested that the investment was too good to be true. There was nothing in the public domain at the time about either M or N that should've put Mrs O and Mr R on notice that the scheme might not be legitimate. The most persuasive aspect of the scam that I've seen is that M used N, the firm regulated by the FCA at the time of the scam, to gain legitimacy and this was highlighted in the literature provided to Mrs O and Mr R which they've said they relied on when making a decision whether to invest in M or not.

Nationwide hasn't said it provided Mrs O and Mr R with a scam warning at the time these payments took place so it hasn't been able to demonstrate that Mrs O and Mr R ignored any effective scam warnings either.

Recovery of funds

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But for completeness,

even if there was a delay, I don't think it likely would have made a difference here. The scam payments were made in October and December 2020. The scam wasn't reported until 2024. And I'm satisfied that the funds would've likely been utilised by this point.

Putting things right

In order to put things right for Mrs O and Mr R, Nationwide should refund Mrs O and Mr R their total outstanding loss taking into account any returns received.

Mrs O and Mr R's representatives have said they received returns amounting to £1,344.77.

Because Mrs O and Mr R have been deprived of this money, I consider it fair that Nationwide should also add 8% simple interest to the above from the 30 October 2024 onwards – which is the date Mrs O and Mr R's claim was declined.

If Nationwide is legally required to deduct tax from the interest it should send Mrs O and Mr R a tax deduction certificate so they can claim it back from HMRC if appropriate.

My final decision

For the reasons set out above, I uphold this complaint about Nationwide Building Society in full.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr R to accept or reject my decision before 7 November 2025.

Emly Hanley Hayes
Ombudsman