

The complaint

Mr and Mrs T complain Nationwide Building Society won't reimburse £41,000 they lost to an investment opportunity that they now consider to be an Authorised Push Payment (APP) scam.

In bringing his complaint, Mr and Mrs T have used the services of a professional representative. Within this decision, for ease of reading, I will refer solely to Mr and Mrs T.

What happened

The background to this complaint is well known to both parties, so I'll only refer to some key events here.

Around February 2023 Mr and Mrs T were introduced to an invitation-only investment opportunity with a company I'll refer to as 'V'. The introduction came from a friend and neighbour, Ms J, who claimed she had successfully invested with the company, as had members of her family. She shared some sample figures for returns on the investment, which Mr and Mrs T thought were very good and convincing. Ms J said she was able to refer new investors through her connections with the company's directors.

Mr and Mrs T were provided with an FAQ document about V. It set out that V traded primarily on the FTSE100; that it was regulated by Luxembourg Commission de Surveillance du Secteur Financier ('CSSF'), which it said was comparable to the Financial Conduct Authority ('FCA'); and it used a broker regulated by the FCA. The FAQ also set out that the fund had previously achieved profits of between 9 and 23%; that it had a 93% monthly trading success rate; and its trading strategy meant that *"total loss is impossible"*. Mr and Mrs T were persuaded by what they'd read about V and decided to invest.

On 16 February 2023, Mr and Mrs T transferred £5,000 from their Nationwide current account to V. They received an email a couple of days later confirming receipt of their funds and confirming they had been deposited into V's FCA regulated broker's account.

Mr and Mrs T say they were able to track their investment's performance through V's online portal, which showed the fund was performing very well. They say this encouraged them to make further investments. By 16 March 2023, Mr and Mrs T had invested a total of £41,000 with V, which they sent from their Nationwide account.

Mr and Mrs T say they had concerns they had been scammed when the FCA started an investigation into V. Mr and Mrs T received an email from V in June 2023, which had been sent to all investors, informing them that the FCA had instructed it to stop all trading due to concerns that it was operating without authorisation. Mr and Mrs T have confirmed they were unable to withdraw anything from the investment.

Mr and Mrs T contacted Nationwide to seek a reimbursement of the funds they had lost to the scam. Nationwide said it was unable to reach a decision on Mr and Mrs T's scam claim as there was an ongoing FCA investigation. It said it would review the case again once the FCA had completed its investigation.

Unhappy with Nationwide's response, Mr and Mrs T referred their complaint to the Financial Ombudsman. Our Investigator upheld the complaint. He was persuaded, on balance, the available evidence demonstrated that V was operating a scam and Mr and Mrs T had a reasonable basis for believing the investment to be legitimate, as such Nationwide was required to reimburse them in full. He therefore recommended that it refund the £41,000 Mr and Mrs T had lost to the scam, plus 8% simple interest.

Mr and Mrs T accepted our Investigator's opinion. Nationwide disagreed. It considered it was premature to conclude V was operating a scam as there was an ongoing FCA investigation. While it acknowledged the Financial Ombudsman isn't bound by the Contingent Reimbursement Model (CRM) Code and can reach a different outcome, it said where the Financial Ombudsman seeks to apply the Code it must do so fully and not selectively. As such, it said R3(1)(c) – which permits a firm to await the outcome of an investigation by a statutory body before making a reimbursement decision - applies as the FCA continues to investigate V's conduct. It also said the evidence obtained by the Financial Ombudsman indicated that there was genuine activity taking place and payments were made for the intended purpose – specifically that a significant amount of funds had been used by V for the purpose of forex trading. It therefore asked that the outcome of the complaint be postponed until the outcome of the FCA's investigation was concluded.

The complaint has now 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'm upholding this complaint for largely the same reasons as our Investigator. I'll explain why.

When considering what is 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 relevant 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 2017 (PSRs) and the terms and conditions of the customer's account. However, where the customer made the payment because of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code

The CRM Code was a voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. Nationwide was a signatory to the CRM Code at the time the payments in dispute were made.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP scam. Under the CRM Code, an APP scam is defined as:

“...a transfer of funds...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.”

The CRM Code is also quite explicit that it doesn't apply to all push payments. It says:

“DS2(2) This code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.”

This makes it clear that “*private civil disputes*” between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

But that doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof (“beyond reasonable doubt”). In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases. So, I would need to see evidence that convinces me it's more likely than not that a criminal fraud has occurred, and therefore that Mr and Mrs T lost their money to an APP scam. If I do find that is the case, then the CRM Code would apply, and Mr and Mrs T would be entitled to reimbursement of their losses unless Nationwide could show that any of the exceptions to reimbursement set out in the code apply.

Can Nationwide delay making a decision under the CRM Code?

The CRM Code says firms should decide whether to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be delayed. If the case is subject to investigation by a statutory body and the outcome of that investigation might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

Nationwide confirmed, in its response to our Investigator's view, that it considers R3(1)(c) applies to this case and has asked that any outcome is postponed to await the outcome of the FCA investigation. But whether R3(1)(c) applies or not, this does not impact Mr and Mrs T's right to refer their complaint to the Financial Ombudsman. Nor does it impact the Financial Ombudsman's ability to provide an outcome if we consider we have sufficient evidence to reach a fair and reasonable outcome.

Is it appropriate to determine Mr and Mrs T's complaint now?

I understand that an FCA investigation into V is still on-going. So, I have considered whether it would be appropriate to delay my decision as a result of the ongoing investigation – in the interests of fairness.

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 investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine Mr and Mrs T'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 they were the victims 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 Mr and Mrs T first complained to Nationwide in April 2024, and I need to bear in mind that this service is required to determine complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr and Mrs T an answer for an unspecified length of time would be appropriate unless truly justified. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware processes involved with the FCA investigation 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 Mr and Mrs T under those processes in respect of their £41,000 investment before paying anything I might award to them on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the ongoing FCA investigation for me to fairly reach a decision on whether Nationwide should reimburse Mr and Mrs T under the provisions of the CRM Code.

Have Mr and Mrs T been the victims of an APP scam, as defined in the CRM Code?

Under the CRM Code, the starting principle is that a Firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam is met (DS1(2)(a)), as set out above. The CRM Code doesn't apply to private civil disputes.

So, the CRM Code wouldn't apply to a payment made for a genuine investment that subsequently failed.

As there's no dispute that Mr and Mrs T's funds were transferred to the intended recipients, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, for there to have been an APP scam, Mr and Mrs T must have transferred funds to V (or persons associated with V) for what they believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

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 – although Mr and Mrs T did not attend these events themselves, they were aware of others who had. 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) – as was the case for Mr and Mrs T.

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

However, from evidence gathered from other complaints considered by the Financial Ombudsman Service, I've found the following facts to be persuasive evidence that V was operating as a scam:

- We are now aware that V's claims of being regulated, or at least in the process of being regulated, with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with an FCA authorised trading exchange and that it was regulated.
- Approximately half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of forex trading. Whereas investors were assured all funds would be immediately moved to an FCA regulated trading account to be used in forex trading. But this didn't happen.
- Of the investors' funds that were sent to V's business account – which included funds sent by Mr and Mrs T - 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 – specifically the claim that they made 23% profit in March 2022 and 9% in August 2022.
- The returns from the forex platform are significantly less than the returns paid to investors, suggesting returns were funded using other investors' money and not investment profits.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was sent to V was not used for its intended purpose. The evidence suggests that Mr and Mrs T weren't involved in a failed investment but a scam. As such, I consider the CRM Code applies.

Are Mr and Mrs T entitled to a refund under the CRM Code?

Under the CRM Code, the starting principle is that a Firm should reimburse a customer who has been the victim of an APP scam, like Mr and Mrs T. But a Firm may choose not to reimburse a customer if it can establish that one or more of the exceptions to reimbursement apply (R2(1)).

As Nationwide has not yet answered Mr and Mrs T's scam claim, it is unclear if it considers any of the exceptions to reimbursement apply. I have therefore considered whether I think it's more likely than not Nationwide could fairly rely on any of the exceptions in this case.

Nationwide has not provided any evidence to suggest that it intervened in any of Mr and Mrs T's payments to V, or offered them any scam warnings. So, I can't see Nationwide could refuse a reimbursement on the basis that Mr and Mrs T ignored an Effective Warning (R2(1)(a)). And considering the circumstances of this case, I consider the only potentially relevant exception is whether Mr and Mrs T made the payments without 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

Did Mr and Mrs T have a reasonable basis for belief?

I have considered whether Mr and Mrs T had a reasonable basis to believe V was legitimate and was providing a genuine investment product.

In doing so, I have given careful consideration to how Mr and Mrs T were introduced to V, alongside the overall sophistication of this scam.

Mr and Mrs T have explained that Ms J introduced them to the exclusive, invitation-only investment opportunity as a way of returning a favour, after work had been carried out on Ms J's home free of charge. Ms J was also able to secure Mr and Mrs T a reduced minimum investment (usually £20,000) due to her connections with V's fund managers. Mr and Mrs T have explained they were under the impression that Ms J's investment had performed really well, and she had made significant withdrawals. She had shown them a spreadsheet with sample results on - which they understood were in fact her own investment returns - which showed really good returns. They were also reassured that their funds would be managed by an FCA regulated broker; V was regulated by the CSSF; V's past trading results and success rate and its promise that there was "*no risk of total loss*".

I think the personal recommendation from Ms J would have been compelling for Mr and Mrs T and I think it is understandable that they placed weight on what they were seeing and hearing about V from their friend. So, I can understand why they would have considered it was a genuine investment opportunity that was being presented to them. I don't think it was unreasonable for them to do so.

I consider the sophisticated set up of the scam would also have been compelling. Mr and Mrs T had reviewed V's website, which they thought looked professional and convincing. The FAQ document was clear and reassured them about the safety of their investment. The account opening process followed a similar pattern to what you would expect from a legitimate firm, as Mr and Mrs T were expected to fulfil KYC checks. They were also given access to V's online portal, which provided the ability to track their supposed investment. In the circumstances I can understand why Mr and Mrs T felt the investment was a genuine one at the time.

Mr and Mrs T have said they were enticed by the possibility of high returns, which exceeded what was available through more mainstream savings or investments. The FAQ document suggested returns of between 9 and 23% – although these returns were not guaranteed. They were also reassured by the risk management strategy, which meant there was no risk of total loss.

I accept some of the claims made by V about the returns it could generate with little to no risk seem unlikely. But importantly, I have to weigh this up alongside what Mr and Mrs T had been told, and shown, by their friend; the overall sophistication of the scam and the outcome of their own research. I think the sophisticated aspects of the scam, particularly with the introduction from a trusted friend outweighs the concerns that they perhaps ought to have had about the returns being claimed.

I must also take into account that an FCA investigation is ongoing, and Nationwide does not consider there is sufficient evidence available yet to determine that V was operating a scam. In this scenario, I think it would be unlikely to conclude that Mr and Mrs T therefore didn't have a reasonable basis for belief.

On balance, I think there was enough to reasonably convince Mr and Mrs T at the time that this was a genuine investment company. With this in mind, I don't think they made the payments without a reasonable basis of belief that V and the investment itself was genuine.

I therefore don't think Nationwide has established that any of the exceptions to reimbursement under the CRM Code apply here. Nor do I think it could fairly rely on such an exception in these circumstances. It follows that it should refund the money Mr and Mrs T lost in full.

Could Nationwide have otherwise prevented Mr and Mrs T's loss?

Outside the provisions of the CRM Code, I consider it unlikely that any intervention by Nationwide at the time of the payments would have positively impacted Mr and Mrs T's decision-making. As touched on above, there were a number of aspects of the scam that made it appear legitimate at the time. I'm also aware there was nothing in the public domain at the time about V from which Nationwide or Mr and Mrs T could have reasonably inferred that a scam was taking place at the time. In the circumstances, I don't think either party would have likely uncovered sufficient cause for concern about V such that Mr and Mrs T would have chosen not to proceed.

Putting things right

I've thought carefully about whether interest should be added to the refund Mr and Mrs T are due from Nationwide. I'm aware that much of the evidence that I have relied on, specifically the beneficiary account statements, only became available because of the investigation carried out by the Financial Ombudsman Service. This information was therefore not available to Nationwide when it was asked to consider Mr and Mrs T's scam claim. The evidence was however summarised to Nationwide in our Investigator's initial view, which was sent on 29 January 2025.

In the circumstances, I think Nationwide ought to have settled Mr and Mrs T's claim within 15 business days of the date of our Investigator's view.

As an investigation into V is ongoing, it's possible Mr and Mrs T may recover some further funds in the future. In order 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 the liquidation process in respect of this £41,000 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 Mr and Mrs T for their consideration and agreement.

My final decision

I uphold this complaint and direct Nationwide Building Society to:

- refund Mr and Mrs T the disputed payments totaling £41,000 made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded (less any tax lawfully deducted), calculated from 19 February 2025 (15 business days after our Investigator's view setting out why the complaint should be upheld) to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 25 September 2025.

Lisa De Noronha
Ombudsman