

The complaint

Mr K complains that Nationwide Building Society ('Nationwide') won't reimburse the funds he lost when he fell victim to what he now believes to have been an investment scam.

What happened

In August 2021, Mr K says he learned of an investment opportunity (I'll refer to the company offering this investment as 'D') through a work colleague. The investment was supposedly to be into a large property portfolio involving long term lets and buying and refurbishing properties for later sale or rental. Mr K says he discussed the investment with a director of D including meeting them in person and knew them from school.

On 28 August 2021, Mr K signed a contract and transferred £70,000 (via seven payments of £10,000) to D.

Mr K initially received returns (£10,500 in total). Mr K also expected to receive the return of his investment capital at the end of the fixed term. In mid-2022 another investor didn't receive their investment capital back, despite obtaining a statutory demand. D subsequently was placed into administration in June 2022.

Mr K subsequently reported the matter to Nationwide as an Authorised Push Payment scam (APP scam). At the time, Nationwide was a signatory to the Lending Standards Board's Reimbursement Model Code (the CRM Code).

Under the terms of the CRM Code, banks and building societies are required to refund APP scam victims unless one of a limited number of exceptions apply. Nationwide declined to refund Mr K. It explained that it did so on the basis that this was a private civil dispute rather than an APP scam. It said that D is registered on Companies House and that Mr K had received returns. Nationwide also noted that investigations into D were ongoing.

Mr K didn't agree and referred his complaint to this service. Our investigator considered the evidence supported the finding that this had been an APP scam rather than a private civil dispute. The investigator said the evidence suggested that, while D might have operated legitimately initially, by the time Mr K had invested it had ceased to be investing funds in line with what it was telling investors.

The investigator said that instead the directors of D latterly appeared to be linked to the directors of another company (I'll refer to this as 'B'). That change in operation had occurred prior to Mr K's investment. There was convincing evidence to show that B had been operating as a Ponzi scheme (a type of fraudulent scheme whereby later investors' money is used to pay returns to earlier investors rather than paying these through the proceeds of business activity). Rather than using investors' funds as D had represented, the funds had been transferred to B and lost.

The investigator thought Mr K's payments had more likely resulted from an APP scam covered by the CRM Code, and that under the Code Nationwide should reimburse him for his net loss.

Nationwide didn't agree. It requested sight of the information regarding the receiving bank and how Mr K's funds were used as well as evidence of the change in behaviour by D.

As an informal agreement could not be reached, the complaint 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 in all the circumstances of a complaint, I'm required to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where the evidence is incomplete or missing, I make my findings based on a balance of probabilities — in other words what I consider is more likely given the information available to me.

In broad terms, the starting position in law is that Nationwide is expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the relevant regulations at the time (the Payment Services Regulations 2017). But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment. Of particular relevance here is the CRM Code.

Is it appropriate to determine this complaint now?

I am aware there is an ongoing investigation into D and whilst Nationwide hasn't specifically requested I consider whether it would be appropriate to delay my decision until any police investigation or administration process is completed, for completeness I have considered whether it is fair for me to do so.

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 on the basis of 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 would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

As for investigations by liquidators/administrators, these are normally made for the purpose of maximising recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

In order to determine Mr K'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 he is the victim of a scam rather than having simply made 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 K first raised his claim with Nationwide in December 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 Mr K 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.

Of course, I do not have the power to conduct a police-style criminal investigation into D. My determination of this complaint can't convict anyone of a criminal offence — that is the role of the criminal courts. I have to decide only whether it is fair and reasonable for Nationwide not to have upheld Mr K's report of an APP scam and their inherent claim for reimbursement of their losses, through an application of the balance of probabilities.

I'm aware the above processes might result in some recoveries for D's creditors/investors. In order to avoid a 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 K under those processes in respect of this investment before paying anything I might award to them on this complaint.

With the above in mind, and for the reasons I discuss further below, I don't think it's necessary to wait to reach a decision on whether Nationwide should reimburse Mr K under the provisions of the CRM Code.

Has Mr K been the victim of an APP scam as defined by the CRM Code?

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 Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a genuine investment that subsequently failed.

And the CRM Code only applies if the definition of an APP scam is met. Section DS1(2)(a) fines an APP scam as:

a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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

To decide whether Mr K is the victim of an APP scam as defined in the CRM Code I have considered the following points in turn:

1. The purpose of the payments and whether Mr K thought this purpose was legitimate.

2. The purpose(s) the recipient (D) had in mind at the time of the payments, and whether this broadly aligned with what Mr K understood to have been the purpose of the payments.
3. Whether there was a significant difference in these purposes, and if so, whether this difference was most likely the result of dishonest deception.

Mr K thought he was investing in a property related investment scheme. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

So, I've gone on to consider what purposes D had for the transaction and whether these purposes were in line with what Mr K had been led to believe.

In reaching an answer on what purposes D more likely intended, I've considered the wider circumstances surrounding D, and linked companies.

The key information is as follows:

- D was a UK incorporated company and traded for a significant period of time before Mr K made his payments. I accept that D appears to have been operating legitimately initially, however I'm satisfied that the evidence supports that this changed and it was not operating legitimately at the time Mr K made his payments on 28 August 2021.
- Mr K believed that D would use his funds to purchase property, refurbish it and then either sell or rent it out for profit. I haven't seen any evidence that supports D had this purpose in mind in obtaining Mr K's funds.
- This service has received information from the receiving bank, which I can't share due to data protection laws. But this evidence does not show that D used Mr K's funds for the purpose they'd believed.
- The returns paid to Mr K appear to have been funded through other investors' money rather than through the legitimate profits of business activity by D. In essence, D was also operating a Ponzi scheme.
- Rather than being used for the purpose Mr K had believed, the evidence I have seen indicates that D was diverting a significant portion of investors' funds to a separate company (B), which claimed to be a forex trading scheme. Based on what I have been able to establish B, more likely than not, was in fact operating an APP scam (in the form of a Ponzi fraud). I've considered the possibility that D was merely the innocent victim of B's fraud, but the evidence leads me to believe it is more likely than not that companies D and B were operating two separate but linked APP scams.
- Aside from the significant sums transferred to B, the joint administrators of D indicate in their report that further significant sums appear to be owed to D by its two directors. Directors' loans of that size do not seem consistent with the purpose Mr K believed D had for his funds. This points to the unjust enrichment of Company directors (and those of B) being the true purpose of D in procuring Mr K's funds. Based on the evidence available to me I find it more likely these were D's true purposes, and that these purposes were fraudulent.

Nationwide asked for a copy of the evidence we had seen. Our service, due to data protection laws is unable to share specific information about the beneficiary account(s), such as the statements we have obtained – as they had been provided by the beneficiary bank in

confidence to allow our service to discharge our investigatory functions, to enable the determination of the complaint as to whether D was likely operating a scam. But a summary of D's accounts and its income and expenditure have been provided to Nationwide.

Based on the available evidence, I'm satisfied on the balance of probabilities that it is more likely than not Mr K's funds weren't used for the intended purpose and that D obtained Mr K's funds as the result of dishonest deception about D's purposes.

So, I find that Mr K's payment to D meets the definition of an APP scam under the CRM Code and falls within the Code's scope.

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. I consider that the evidence is sufficient for me to reach a finding on the key points based on the balance of probabilities.

Does an exception to reimbursement apply?

The CRM Code says that Mr K is entitled to a full refund unless Nationwide can establish that an exception to reimbursement applies. Nationwide hasn't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

The CRM Code says that a bank 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.

I'm satisfied that Mr K had a reasonable basis for believing D offered a genuine investment opportunity. I'm persuaded by Mr K's testimony that was introduced to the investment by work colleague he'd known for some time, someone who he had trusted. Mr K had met both company directors in person and visited D's offices in London. Mr K received a professional looking loan agreement/contract for the investment. And he knew of others who'd invested, apparently successfully. The returns, while high, were not what I would consider clearly too good to be true. In short there were compelling reasons for him to believe that what was on offer was genuine.

I've also taken into account that even now, with the benefit of hindsight and evidence surrounding D, there is still a dispute regarding whether D was a scam or not. So, I think it would be unfair to suggest that Mr K ought fairly and reasonably to have realised this at the time themselves.

Overall, I don't think Mr K made the payments without a reasonable basis of belief that D and the investment itself was genuine. So I don't think Nationwide can fairly apply this exception to reimbursement.

Nationwide hasn't said that an effective warning was ignored when Mr K made the payments. I note from Nationwide's submissions that Mr K selected friends or relative as the payment purpose at the time and so, the corresponding warning wasn't relevant to the scam Mr K fell victim to. It therefore can't fairly say Mr K ignored an effective warning or fairly rely on that exception to reimbursement either.

As I'm not satisfied that Nationwide can rely on an exception to reimbursement, Mr K is entitled to be reimbursed under the CRM Code (subject to what I say below).

Putting things right

As it appears there is an ongoing investigation by the police and possibly the company administrators, there exists the possibility that Mr K may at some later date recover some of his currently outstanding loss.

In order to avoid a risk of double recovery, Nationwide is entitled to take, if it wishes, an assignment of the rights to all future distributions under the liquidation or other process in respect of this 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 K for his consideration and agreement.

I'm aware that when Mr K first contacted Nationwide about this payment, he did so in the form of a DISP complaint. In that first contact I consider he clearly stated the basis of his scam claim, including the relevant payment being claimed for, the returns he'd received and his basis for believing this to have been a criminal scam rather than something that might otherwise have been considered a private civil dispute. I consider the level of information he provided at this point was at least sufficient for Nationwide to reasonably have identified the need to begin its investigation of a scam claim, and so to have identified that this was more likely than not an APP scam subject to reimbursement under the CRM Code.

Mr K paid a total of £70,000. He received returns (supposedly profits from his investment but instead fake returns funded through a Ponzi scheme) totalling the sum of £10,500. Mr K's net loss therefore equates to £59,500.

Had Nationwide refunded him this sum within the timescales specified within the CRM Code (which should in all but exceptional circumstances be at most 15 business days after the date the scam was first reported), then Mr K would not have been deprived of this sum for the time he has been. To reflect that loss of use, I consider it would be fair and reasonable to require Nationwide to pay interest on the net loss sum at a rate of 8% simple per year. It should do so from the date I consider it ought to have reimbursed Mr K under the CRM Code, that being 15 business days after the date Mr K first notified Nationwide that he believed he had been the victim of an investment scam.

Overall, I'm satisfied Mr K was the victim of an APP scam, and he should have been reimbursed for his losses by Nationwide under the terms of the CRM Code. To put matters right, Nationwide Building Society should, within 28 days of receiving notification of Mr K's acceptance of my final decision:

- Pay Mr K the net amount he lost through these payments — this being the sum of £59,500; and

- Pay interest on the above amount at the rate of 8% simple per year, calculated over the period running from 15 business days after Nationwide Building Society first became aware Mr K considered he might have been the victim of an APP scam until 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 Mr K to accept or reject my decision before 12 December 2025.

Kathryn Milne
Ombudsman