

The complaint

Mr S complains that Nationwide Building Society has not refunded the money he lost to a scam.

What happened

In December 2022 Mr S was called by someone working for an investment company – which I'll call C – and discussed investment opportunities. Mr S said he carried out various checks to ensure C was legitimate, he also downloaded C's app so he could monitor his investment. In December 2022 Mr S made an initial investment of £10,000, he was told he'd be able to withdraw his profits in 18 months.

In November 2023 Mr S attempted three further payments to C of £6,000 each. At that time Nationwide identified that he may potentially be at risk and so contacted Mr S to ask about these payments. Mr S told Nationwide about his investment, and Nationwide identified some warnings about C on the Financial Conduct Authority's website, as a result Nationwide declined to process these payments.

Mr S called his account manager at C to ask about what Nationwide had said, he says the account manager reassured him that there was nothing to be concerned about. It seems Mr S was then told he needed to pay £6,000 to protect his investment funds, he felt he had to do as he'd been asked, and so made this payment direct to the account manager.

Mr S has since realised that he has been scammed, and so contacted Nationwide to ask it to refund his loss. Nationwide looked into what had happened, but said it was unable to make any decision about whether Mr S was entitled to a refund as there was an ongoing investigation into C's activities. Mr S was unhappy with Nationwide's response, and so referred his complaint to our service.

An Investigator looked into Mr S's complaint, and they were satisfied that there was enough evidence available to say that Mr S had been the victim of a scam, so they went on to consider Mr S's complaint under the Lending Standards Board's Contingent reimbursement Model Code (the Code) which applies in this case. The investigator felt that Mr S was entitled to a refund of his loss under the Code.

Mr S accepted these findings, Nationwide did not, so as no agreement could be reached this case was passed to me for review. I've since written to both parties to explain why I feel that Mr S is entitled to a refund under the section of the Code relating to vulnerability. Ms S accepted those provisional findings, Nationwide did not, it said it's position on this complaint remained unchanged.

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.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that an investigation is still ongoing into I's activities.

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.

In order to determine Mr S'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 Mr S 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.

I also 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 S 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.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the any investigations for me fairly to reach a decision on whether Nationwide should reimburse Mr S under the provisions of the CRM Code.

Has Mr S been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Mr S authorised the payments that are the subject of this complaint. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transactions. But he says that he has been the victim of an authorised push payment (APP) scam.

Nationwide has signed up to the voluntary CRM Code, which provides additional protection to scam victims. 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, as set out in it, is met. I have set this definition out below:

...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.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

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.*

I've therefore considered whether the payments Mr S made to C and to his account manager fall under the scope of an APP scam as set out above. Having done so, I think that they do.

I say this because our service is now aware of a number of issues related to C, which suggest to us it is more likely they were carrying out a scam. Specifically:

- The investment company would have required FCA authorisation in order to give the financial advice and to provide the trading platform consumers were relying on as part of their investment. As they weren't authorised and regulated, it suggests this was a scam. There is also an FCA warning posted regarding the company.
- Mr S received no returns on his investment and appears to have been given false information by a representative of C regarding its regulatory status.
- Receiving bank evidence shows very little of consumers' funds were being used as C had claimed. In fact, the number and value of incoming payments entering the account far exceeds any payments that can be directly attributed to investing platforms.

Considering all of the above, I do not think C was using investor funds, such as Mr S's £16,000, for the purpose they were intended for. And I think this difference in purpose is down to dishonest deception on C's part. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

Is Mr S entitled to reimbursement under the CRM Code?

I've considered whether Santander should refund Mr S under the provisions of the CRM Code. Under the CRM Code the starting position is that a firm should reimburse customers who have been the victim of an APP scam, except in limited circumstances. These circumstances include where the firm can establish that the customer made the scam payments without a reasonable basis for believing that they were for genuine goods or services; and/or that the payee was legitimate.

However, the CRM code also requires firms to assess whether a customer was vulnerable to the APP scam they fell victim to at the time it occurred. The relevant sections state:

"A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.

This should be assessed on a case-by-case basis.

In these circumstances, the Customer should be reimbursed notwithstanding the provisions in R2(1), and whether or not the Firm had previously identified the Customer as vulnerable."

Mr S has provided evidence of his severe anxiety and depression, which has resulted in him being unable to work for an extended period of time. Mr S has also provided evidence that Occupational Health consider his anxiety and depression to be severe and long lasting enough to be classed as a disability.

Mr S has said his anxiety and depression affected his decision making at the time of the scam. And having looked over the evidence Mr S has provided about his medical issues, I think it's more likely they would have affected his ability to make reasoned decisions and to protect himself against a sophisticated socially engineered scam such as the one he fell victim to.

Nationwide's notes also show that Mr S told it he had been out of work for two years at the time of the scam. So, given his personal circumstances, and that the financial return this investment supposedly offered would have been of significant benefit to him, I think it's most likely that Mr S was vulnerable and susceptible to this type of scam. I think his perception of the possible risks involved and the steps he could take to address them was significantly and adversely affected by his personal circumstances, and I think this is evidenced in the level to which it appears Mr S was manipulated by the scammer, particularly when thinking about the additional payment in late 2023.

In these circumstances I don't think it would be reasonable to expect him to have protected himself against the APP scam he fell victim to. It follows that I think Nationwide is responsible for reimbursing Mr S for his losses due to the scam, under the provisions of the Code.

Putting things right

To resolve this complaint Nationwide should:

- Refund Mr S's £16,000 loss
- Apply 8% interest to this refund from the date of the declined claim to the date of settlement.

My final decision

I uphold this complaint. Nationwide Building Society should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 July 2025.

Sophie Mitchell
Ombudsman