

The complaint

Mr W and Mrs B complain that Nationwide Building Society won't reimburse them after they send money to an investment, that they now consider to have been a scam.

What happened

The circumstances of this complaint are well known to both parties so I won't repeat them in detail here. But briefly, both parties accept that in November 2020, Mr W and Mrs B made two payments, each for £10,000, via an accountancy firm to another firm I'll refer to as B, on the understanding that it was a loan agreement and that B would use funds to invest in stocks and shares, providing Mr W and Mrs B with a guaranteed return of 20%.

Mr W and Mrs B had been referred to B via a separate company, who Mr W's friend had used in the past to provide advice on investments successfully. This company also advised Mr W that it also had invested with B.

Mr W and Mrs B had online calls with B where the investment process was explained. They already previously invested in April 2020 for £10,000 and this was performing as expected, which is why they decided to invest further. Their April 2020 investment was successfully cashed out in April 2021.

For payments made in November 2020, this investment also appeared to have performed as expected – however, this time Mr W and Mrs B decided to reinvest with the additional returns, rather than cash out. However, before this investment matured, Mr W and Mrs B were advised that B's director had been removed and that they wouldn't be receiving any further returns. B went into administration in October 2022.

Believing they had fallen victim to a scam, Mr W and Mrs B contacted Nationwide to make a claim. Nationwide considered their claim but didn't consider it was liable to reimburse them. Nationwide said it considered the matter was a civil dispute between Mr W, Mrs B and B – as B was a registered chartered accountancy firm and was registered on Companies House. However it offered £50 compensation to Mr W and Mrs B due to confusion during the complaints process regarding a second complaint being logged.

Mr W and Mrs B remained unhappy and referred their complaint to our service. An investigator considered their complaint and upheld it. He thought the evidence available supported that B had intended to defraud Mr W and Mrs B from the outset, rather than to provide a genuine investment service.

Nationwide didn't agree to uphold Mr W and Mrs B's complaint, so the matter has been referred to me for a final decision.

Since the complaint has been with me, I understand further information has been shared with Nationwide regarding payments, received and sent, both by B and other firms linked to the scam, including where Mr W and Mrs B's funds were sent.

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.

It's important to highlight that with cases like this, in deciding whether there was in fact a scam, I need to weigh up the available evidence and make my decision about what I think is likely to have happened on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

When considering what is fair and reasonable, I'm also 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 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.

Nationwide is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). This requires firms to reimburse customers who have been the victims of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an authorised push payment (APP) scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

Have Mr W and Mrs B been the victims of a scam, as defined in the CRM Code?

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, it doesn't cover a genuine investment or a genuine business that subsequently failed.

So in order to determine whether Mr W and Mrs B have been the victims of a scam as defined in the CRM Code I need to consider whether the purpose they intended for the payments was legitimate, whether the purposes they and B intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of B.

From what I've seen and what Mr W and Mrs B have told us, I'm satisfied they made the payments with the intention of investing in stocks and shares. They thought the funds would be used by B to trade and that they would receive a guaranteed 20% return on their investment.

But I think the evidence I've seen suggests B didn't intend to act in line with the purpose for the payments it had agreed with Mr W and Mrs B. I'll explain why.

B received around £28,000,000 in investment funds – however, of these funds, only around £4,700,000 appears to have been invested (so less than 17% of funds received) – and of this money invested, B made a loss of around £600,000.

Despite this low proportion of investment, B still paid out around £19,000,000 to investors (so around 68% of capital received). Therefore it seems a large proportion of ‘returns’ investors were seeing weren’t in fact investment returns – but funds provided to B by other investors.

It therefore seems that B was providing funds to investors to provide the impression that it was performing as expected, the likely intention of which was to obtain further investment into what was an overall scam.

This is supported by the fact that B was also never regulated by the FCA, which it needed to be to undertake the activity it was alleging to be engaged in. From Mr W’s testimony, it also appears that B misled investors over the need to be regulated.

Additionally, as recently shared with Nationwide, while not all payments were made directly to B, we’ve seen evidence that notable proportions of payments made to other firms were passed on both to B and other firms under the same director, with little to no evidence of genuine trading activity.

So based on the above, I am satisfied that it is more likely B was not acting legitimately, since its intentions did not align with Mr W and Mrs B’s intentions, and I am satisfied that B was dishonest in this regard. It follows that I’m satisfied Mr W and Mrs B were the victims of a scam.

Are Mr W and Mrs B entitled to a refund under the CRM code?

Nationwide is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for Nationwide to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

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

- The customer ignored what the CRM Code refers to as an “Effective Warning” by failing to take appropriate action in response to such an effective warning
- 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

**Further exceptions outlined in the CRM Code do not apply to this case.*

Did Nationwide meet its obligations under the CRM Code and did Mr W and Mrs B ignore an effective warning?

Nationwide has confirmed that when making payments towards the scam, Mr W and Mrs B confirmed the purpose for the payment was an investment. As a result, Nationwide says they were provided with the following warning:

‘Does the opportunity seem too good to be true?’

Were you contacted unexpectedly, or are you feeling pressured to invest?

Have account details been provided by email?

If yes to any of the above, it's likely to be a scam and you should stop now.

Before you commit to any investment:

Check the FCA warning list and follow their advice.

Search online for reviews, ensure you have all the paperwork you'd expect, and check for any other websites under the same company name.'

Nationwide hasn't provided any evidence for how this warning would have appeared for Mr B and Mrs W. However, in any event, I don't think it can be considered effective under the CRM Code. For example, the advice to check the FCA warning list isn't clear as to what this list is for, or how it should be used. We're also aware that even where professional appearing paperwork is provided for an investment, that doesn't always mean it's legitimate.

I therefore don't think Nationwide provided a warning to Mr W and Mrs B that would be considered effective under the CRM Code and as a result, don't consider Nationwide can rely on this exception as a reason to not compensate Mr W and Mrs B.

Did Mr W and Mrs B have a reasonable basis for belief?

I've considered whether Mr W and Mrs B acted reasonably when making these payments, or whether there were sufficient warning signs that this wasn't a genuine investment. Having considered all the evidence, I don't think they did act unreasonably in the circumstances. I've taken into account that even now, with the benefit of hindsight and further damaging evidence surrounding B, there is still a dispute regarding whether B was a scam or not. So I think it would be unfair to suggest that Mr W and Mrs B ought to have realised this at the time.

Mr W and Mrs B were introduced to B by someone they believed to be greater informed about investments, being training providers in this field, and were told this firm itself was investing in B. I think this would have reassured Mr W and Mrs B that this was a good opportunity. Mr W was also able to meet with members of this firm in person, as well as meeting members of B via online meetings. Mr W has explained that B made him aware that it wasn't regulated, but Mr W was told that this was why the returns were as high as they were and not something a regulated investment could offer. Unfortunately it doesn't seem Mr W had a full understanding of the importance of being a regulated firm and without any clearer education by Nationwide, I don't think the explanation provided was unreasonable in the circumstances.

By the time Mr W and Mrs B made payments towards the scam for their Nationwide account, they'd already invested previously via another bank account. While they hadn't received these returns, they were under the impression the investment was performing well (and did receive returns a few months later). They were also aware of others who had successfully received returns. So while the returns being offered here were high, I think that by the time Mr W and Mrs B made payments from their Nationwide account, they had greater reason to consider these returns were possible, based on their own experience and that of others. I think this would have reassured Mr W and Mrs B on the legitimacy of the opportunity.

When making the payments towards their investment, Mr W and Mrs B paid an accountancy firm, rather than B, although they've said this didn't ring alarm bells. I don't think this is particularly surprising considering the nature of the business they were paying being accounting, rather than an entirely irrelevant firm.

All in all, I think Mr W and Mrs B acted reasonably. I accept that there were other checks they could have conducted, such as further exploring FCA regulation, but by not doing so,

and without a clearer warning by Nationwide, I don't think this signifies that they were unreasonable in proceeding. I think there were enough factors at play that Mr W and Mrs B relied on when assuming this investment was genuine and that they've therefore met their liabilities under the Code for reimbursement.

As there is an ongoing investigation into B by the Police, it's possible Mr W and Mrs B may recover some further funds in the future, through that process. 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 that process in respect of this £20,000 investment before paying the award.

Compensation

Nationwide has awarded £50 compensation to acknowledge that it provided conflicting information about whether a new complaint was being reviewed for Mr W and Mrs B. Having considered this offer, I think it's fair. While I think this error would have caused added confusion to Mr W and Mrs B at a stressful time, I'm also aware that at this time Nationwide had already provided its thoughts on their complaint and so the payment offered is proportionate to any inconvenience caused.

If Nationwide elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr W and Mrs B for their consideration and agreement.

My final decision

My final decision is that I uphold Mr W and Mrs B's complaint against Nationwide Building Society and I direct it to:

- Refund Mr W and Mrs B in full the payments they made towards the scam (£20,000)
- Apply 8% simple interest, from the time it declined Mr W and Mrs B's claim under the CRM Code until the date of settlement.
- Pay the previously offered £50 in compensation if this has not already been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs B to accept or reject my decision before 26 August 2025.

Kirsty Upton
Ombudsman