

The complaint

Mr and Mrs P complain Nationwide Building Society ('Nationwide'), haven't reimbursed them following an Authorised Push Payment ('APP') property investment scam they fell victim to. They say Nationwide should reimburse them for the money they lost.

Mr and Mrs P have brought the complaint with the assistance of a professional representative. However, for ease of reading within this decision, I will refer to Mr and Mrs P in the main.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mr and Mrs P were introduced to a property development / investment company which I'll refer to as 'D'. They were aware that the company had been operating for a number of years and had a large property portfolio. Mr and Mrs P's son was also a director of D alongside another director whom I'll call 'H'. Mr and Mrs P advised they had known H and his family for over 10 years and believed him to have always been a reliable, hardworking and trustworthy person.

Mr and Mrs P believed D was a property development scheme and their investment capital would be used to purchase, refurbish and sell/let properties to generate a profit. They believed they would receive a full return of their investment capital at the end of a fixed-term, along with a guaranteed rate of interest, which was to be paid monthly.

Believing everything to be genuine, Mr and Mrs P decided to invest with D. Mr and Mrs P had recently received some money as a result of an inheritance and the sale of a property. Using the money they had received, they entered into an agreement with D. The agreement set out they were to invest £400,000 for a term of 24 months with D repaying this principal amount to Mr and Mrs P at the end of the term, and with interest payable on the unpaid principal, at a rate of 20% per month.

On 29 June 2021, Mr and Mrs P made a CHAPS payment of £400,000 to D.

In mid-2022, an individual who had invested with D didn't receive their investment capital back, despite obtaining a statutory demand. This resulted in the appointment of an administrator in June 2022.

Mr and Mrs P, considered they had been the victim of a scam orchestrated by D (and their son) and through their professional representative, subsequently reported the matter to Nationwide on 23 August 2024. They considered they should be reimbursed for their loss under the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). This was a voluntary code that Nationwide was a signatory of. The CRM Code required firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances.

Nationwide couldn't provide an answer to Mr and Mrs P's claim within 15 days, and on 6 September 2024, Nationwide advised Mr and Mrs P that they could refer the matter to our service. But it also explained it would issue its final response to them by 26 September 2024.

Nationwide subsequently issued its final response on 20 September 2024. Within that it considered that the payment Mr and Mrs P had made to D amounted to a civil dispute – and the CRM Code didn't apply to civil disputes. They considered D was a property investment company which had a company website, was registered on Companies House and Mr and Mrs P had received £100,313.00 in returns from their investment.

Nationwide considered at the time it had reviewed Mr and Mrs P's claim; there wasn't evidence to suggest that D was a scam and that it seemed that D had gone into liquidation and administrators had been appointed. Nationwide advised Mr and Mrs P that if they received further information from Trading Standards or the Police that evidenced D was a scam, then it would review their claim again.

Unhappy with the response, Mr and Mrs P referred the matter to our service.

One of our Investigators looked into the matter and upheld Mr and Mrs P's complaint. In short, they felt that it was most likely that D had been operating legitimately as a property development company from 2016 to approximately April/May 2019. However, they considered that by the time Mr and Mrs P invested with D, its behaviour had changed significantly and was more likely than not operating a scam. They considered the evidence suggested it wasn't using investor funds for the purpose in which they were intended – namely that investors funds weren't being used to fund new property purchases and were instead withdrawn to accounts in the names of the directors, transferred to another company (which I'll call 'B' – who were likely operating a Ponzi scheme scam) or used to pay existing investors. They therefore considered that in June 2021, when Mr and Mrs P made their payment to D, it was most likely that D was operating a sophisticated scam. They therefore considered the CRM Code applied to the payment Mr and Mrs P had made and they did not think any exceptions to reimbursement applied.

They therefore recommended Mr and Mrs P be reimbursed their remaining loss (£299,687), as well as 8% simple interest from the date Nationwide declined Mr and Mrs P's claim under the CRM Code until the date of settlement.

Mr and Mrs P accepted the findings, however Nationwide did not. Nationwide sought the evidence our service had relied on in determining D was likely operating a scam.

Our service, due to data protection laws was unable to share specific information about the beneficiary account(s), such as the statements we had 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 was provided to Nationwide.

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 have been good industry practice at the time.

Nationwide was a signatory to the CRM Code. It required firms to reimburse victims of APP scams in all but a limited number of circumstances.

Nationwide consider that the payment Mr and Mrs P made to D is a civil dispute and is something that is not covered by the CRM Code.

In order to reach a decision, I've considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined 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."

DS2(2)(b) explains that the CRM Code does not apply to:

"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"

The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM Code doesn't apply to private civil disputes.

So, it wouldn't apply to a payment made for a genuine investment that subsequently failed. As there's no dispute that Mr and Mrs P's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, Mr and Mrs P must have transferred funds to D for what they believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

I've therefore considered whether or not Mr and Mrs P's intended purpose for the payment was legitimate, whether or not the intended purposes of Mr and Mrs P and D were substantially aligned and, if not, whether or not this was the result of dishonest deception on the part of D.

Mr and Mrs P loaned a considerable sum of money (£400,000) to D in June 2021, which they believed would be used towards property development and their investment capital would be used to purchase, refurbish and sell/let properties to generate a profit. They understood their loan would be repaid after a fixed period and that they would receive interest on the unpaid principal. Having discussed the investment opportunity with others who had already invested, Mr and Mrs P believed D was legitimate.

I've then considered whether there's convincing evidence to demonstrate that D's purpose of the payment was fraudulent. That is, whether D's purpose must have been to misappropriate Mr and Mrs P's funds or otherwise deprive them of their money, rather than to use it for the purpose believed by Mr and Mrs P.

- The beneficiary statements between April 2017 and March 2019 indicate D was receiving investor funds and using these in a manner consistent with property development. The statements suggest that D was building a portfolio of properties to develop and either rent out or sell on and were sharing its profits with investors.
- However, from approximately April 2019, D's behaviour changed significantly. The beneficiary statements don't indicate D was continuing to purchase many properties after April 2019. So, whilst there was account activity that was consistent with property development after April 2019 (approximately £2m), it seems this was largely relating to properties that had already been purchased.
- From April 2019, approximately £8.3m was received by D in investment capital, compared to approximately £650,000 that it received between April 2017 and March 2019 – which is a dramatic shift.
- From April 2019, the directors withdrew over £2.7m from D's accounts into their personal accounts – around £1.3m more than they put into D's accounts during the same period.
- And, importantly, D also diverted approximately £8m to accounts controlled by 'B' – which claimed to be a foreign exchange ('forex') trading investment scheme. Trading forex is a highly risky investment, and this was not what investors were led to believe their money would be used for. Of the funds that were sent to B (by individual investors, and business investors –including from D's accounts), only a small amount was ever actually traded – approximately 14% - and this resulted in a loss, despite B paying millions to investors in returns. As a result, B was, most likely, operating a Ponzi scheme and was an APP scam.
- The evidence suggests D and B were more likely than not working together to operate two separate, but closely linked, APP scams. And the change in D's behaviour in or around April / May 2019, coincided with the creation of a new company. The four shareholders of this company were the two directors of D and the two directors of B. This demonstrates that the relationship between D and B was more than just a client and a forex trader. D's behaviour changed significantly once this new company was founded and this is, to my mind, more than just a mere coincidence.
- The evidence suggests D's ongoing property development costs were funded by its directors and D's existing property portfolio, whilst investment capital it received from investors was being diverted to B instead of being used for property development. And the funds sent to B, mostly weren't being traded in forex – as B was likely operating a Ponzi scheme. Yet despite this, D was able to pay over £3.5m to investors as returns, which significantly exceeds the £1.7m income it received from rent and property sales.

- I appreciate there is an ongoing police investigation into B and acknowledge the police have decided not to investigate D as part of this. However, the police have advised this is because including D in the investigation into B would make the investigation too large and it is not because they've concluded that D wasn't involved in fraudulent behaviour.
- From April 2019, D doesn't appear to have been using investor funds for the purpose in which they were intended, and so this demonstrates that they weren't the legitimate supplier of a service at the time Mr and Mrs P made their payment. D's conduct went beyond simply misleading investors about a genuine investment opportunity and that the real purpose of the payments received was different to what investors were led to believe – and this was through deception on the part of D.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was intended for and sent to D was not used for its intended purpose. The evidence suggests that Mr and Mrs P weren't involved in a failed property investment scheme, but a scam orchestrated by D.

So, as I'm satisfied Mr and Mrs P have most likely been the victim of an APP scam, I've considered whether they should be reimbursed or not under the CRM Code.

Are Mr and Mrs P entitled to reimbursement under the CRM Code?

I've considered whether Nationwide should reimburse Mr and Mrs P under the provisions of the CRM Code. There are generally two exceptions to reimbursement:

- Mr and Mrs P made the payment without a reasonable basis for believing that they were for genuine goods or services; and/or D was legitimate.
- Mr and Mrs P ignored what the CRM Code deems to be an 'Effective Warning'.

And importantly, when assessing whether it can establish these things, Nationwide must consider whether they would have had a 'material effect on preventing the APP scam'.

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

In doing so, I have considered how Mr and Mrs P were introduced to D. I consider this to be a key factor in considering whether they held a reasonable basis of belief when making a payment to D. Sadly, in this case, Mr and Mrs P were introduced to investing in D, in June 2021, by the two directors of D – one of which was their son. I think it is fair to say this would have been extremely convincing and I'm mindful that Mr and Mrs P had seen D operating legitimately for a number of years and seemingly growing successfully. Along with the family connection with one of the directors of D, Mr and Mrs P knew the other director – and had known him for a number of years also. So, I can understand why it would have seemed a genuine opportunity to Mr and Mrs P at the time.

I accept some of the claims made by D about the returns it could generate seem unlikely. But, and importantly, alongside this I also have to weigh up what Mr and Mrs P knew about D from the directors with which there was such a close connection and also from what they had seen others seemingly get back in returns and how their investments were doing. I think the sophisticated aspects of the scam and the personal family recommendations, outweighs the concerns that Mr and Mrs P perhaps ought to have had about the returns being claimed.

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 and Mrs P ought fairly and reasonably to have realised this at the time themselves.

On balance, I think there was enough to reasonably convince Mr and Mrs P at the time that this was a genuine investment opportunity – and they certainly did not expect to be duped by their own son. And as a result of what happened, Mr and Mrs P are now estranged from their son. Mr and Mrs P have my sympathies here – the emotional turmoil and impact that must have resulted from finding out that they were duped by their son and scammed, and for such a considerable life changing amount of money, must have been terrible for them.

With all the above in mind, I don't think Mr and Mrs P made the payments without a reasonable basis of belief that D and the investment itself was genuine.

I have also considered whether Nationwide can rely on the exception to reimbursement that Mr and Mrs P ignored what the CRM Code deems to be an 'Effective Warning'. However, I am mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a 'material effect on preventing the APP scam'.

Here Mr and Mrs P had no reason to believe that D wasn't a genuine company at the time. So, I think it is fair to say that a warning wouldn't have had a material effect on preventing the scam such was their belief in things. So, I do not think an exception to reimbursement can be applied for this reason in any event.

With the above in mind, I don't think Nationwide has established that any of the exceptions to reimbursement under the CRM Code apply here. It follows that it should re-imburse Mr and Mrs P's remaining losses in full.

Outside the provisions of the CRM Code, I consider it unlikely that any intervention by Nationwide at the time of the payment would have positively impacted Mr and Mrs P's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about D at the time such that Mr and Mrs P would have chosen not to proceed.

Summary

Overall, I am satisfied, based on the evidence available, that Mr and Mrs P were more likely than not the victim of an APP scam. And their fraud claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied Nationwide should reimburse Mr and Mrs P under the provisions of the CRM Code.

With regard to additional compensatory interest, I consider that it ought to be applied from the date Nationwide declined Mr and Mrs P's claim under the CRM Code until the date of settlement. I'm satisfied there was enough information available to Nationwide, at that time Mr and Mrs P raised their claim to it, to have allowed it to carry out an assessment and/or verify any information it needed to and provide reimbursement under the CRM Code.

Putting things right

I uphold this complaint. Nationwide Building Society should pay Mr and Mrs P:

- the remaining amount they lost to the scam orchestrated by D (that being £299,687); and
- 8% simple interest on that amount from the date Mr and Mrs P's claim was declined under the CRM Code until the date of settlement.

My final decision

For the reasons given above, my final decision is that I uphold this complaint.

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

Matthew Horner
Ombudsman