

The complaint

Mr R complains that Nationwide Building Society ('Nationwide') hasn't refunded the money he believes he lost to an authorised push payment ('APP') investment scam.

Mr R referred his complaint to this service with the help of a professional representative. However, for ease of reading, I'll refer only to Mr R throughout my decision.

What happened

The circumstances of the complaint are well-known to both parties. So, I don't intend to set these out in detail here. However, I'll provide a brief summary of what's happened.

In August 2022, a friend of Mr R introduced him to an investment opportunity with a company which I'll refer to as 'Company I'. Mr R understood that Company I was primarily a foreign exchange ('forex') trading scheme, and he was told if he invested, he would receive a profit of 3% per month (compounded), which was guaranteed for a period of 12 months.

Believing Company I to be a genuine investment opportunity, Mr R made an investment of £5,000 on 27 August 2022. The investment appeared to be growing as expected, encouraging Mr R to invest another £25,000 between December 2022 and December 2023.

In July 2024, Mr R received an email, which said the director of Company I (whom I'll refer to as 'N') had handed himself into the police for deceit and falsifying records, and there was an ongoing police investigation into Company I and N. In response, Mr R tried to withdraw his funds from Company I, but this wasn't successful. Having lost his money and believing he'd been the victim of an APP scam, Mr R asked Nationwide to refund his £30,000 loss.

Nationwide declined to reimburse Mr R, as it didn't consider there was sufficient evidence to demonstrate Company I had intended to scam Mr R when the disputed payments were made and so it didn't consider itself responsible for Mr R's loss. Mr R made a complaint, but Nationwide maintained its initial position that it didn't need to reimburse him. However, Nationwide did agree to pay £25 compensation to Mr R for some customer service issues he experienced when notifying Nationwide of the situation.

Unhappy with Nationwide's response, Mr R referred his complaint to this service. Our Investigator upheld the complaint. In summary, they felt there was sufficient evidence to conclude that Company I was most likely an APP scam, and they recommended Nationwide reimburse Mr R's loss of £30,000, plus interest.

Mr R accepted our Investigator's opinion, but Nationwide didn't agree. As an agreement couldn't be reached, the complaint has 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.

At the time of Mr R's payments to Company I, Nationwide was signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code, which required firms to reimburse customers who'd been the victims of APP scams in all but a limited number of circumstances. However, Nationwide doesn't think the CRM Code is a relevant consideration in this case.

For the CRM Code to apply to Mr R's circumstances, I need to be reasonably satisfied that it's more likely than not that Mr R's payments to Company I were made for a fraudulent purpose – i.e., he was the victim of an APP scam, and his funds were criminally obtained by Company I.

I'm very aware that there is an ongoing police investigation into Company I and N, the specifics of which haven't been shared with this service. There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. 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.

In order to determine Mr R'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 R was the victim of an APP 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 R first raised his claim with Nationwide in July 2024, 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 R 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.

I'm aware the police investigation might result in some recoveries for Company I's investors. In order 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 R under those processes in respect of this investment before paying anything I might award Mr R on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the ongoing police investigation for me to fairly reach a decision on whether Nationwide should reimburse Mr R under the provisions of the CRM Code. I'm persuaded Mr R has, most likely, been the victim of an APP scam. As a result, I think the CRM Code is a relevant consideration in this complaint. I'll explain why.

To operate legally in the United Kingdom, Company I needed to be authorised and regulated by the Financial Conduct Authority ('FCA'). However, in a post on its website dated 3 January 2023, the FCA confirmed that Company I wasn't authorised and regulated by it.

I accept that Company I operating without authorisation from the FCA isn't, on its own, sufficient to say it was scamming investors. However, there is additional evidence available which persuades me Company I was, more likely than not, an APP scam.

I've reviewed Mr R's contract with Company I. There is nothing within the contract that sets out what Mr R was obliged to pay Company I for the investment activity it claimed it would undertake on his behalf. This suggests Company I would be managing Mr R's investment for free, meaning there was no financial remuneration for Company I to trade Mr R's funds, or an incentive to trade with appropriate due diligence. This doesn't seem like the actions of a legitimate investment firm.

Mr R's contract with Company I guaranteed a monthly return of 3%. I don't think a genuine investment would guarantee a rate of return, when any profit/loss was dependent on its trading success. Company I was also promising an annual profit of £2,128.80 on a £5,000 investment, equivalent to a 42.6% annual return, which seems unrealistic, and a genuine investment firm is unlikely to guarantee such a high rate of return.

Mr R sent funds to two accounts with two separate beneficiary firms, which I'll refer to as 'W' and 'Z'. Both firms have provided statements for the accounts Mr R paid. W has also provided statements for Company I's linked accounts too.

We've accepted Company I's bank statements in confidence. However, where it's appropriate to do so the FCA's Handbook does allow this service to share a summary of what the evidence has shown.

I've carefully reviewed the statements, but there's very little evidence to suggest Company I was engaged in legitimate investment activities or that Mr R's funds, specifically, were invested in the way that was intended.

Mr R first invested with Company I in August 2022. His funds weren't moved to a trading platform for the benefit of forex trading or other investment activity. Instead, the funds were paid to other investors (presumably as returns); other companies with no apparent connections to investing; or for personal expenses.

The situation was similar after Mr R invested with Company I again in December 2022, with the addition of funds being exchanged for United States Dollars ('USD') before being transferred to companies with no apparent connection to investment activity. This pattern was repeated after Mr R's investments in July, October and December 2023.

After reviewing Company I's statements, I'm satisfied that it's more likely than not that Mr R's funds weren't invested as he was told they would be. There is very little activity that appears to be genuine investment transactions debiting Company I's accounts and there are no transactions crediting the account which are identifiably from a trading platform (or other investment platform), despite substantial amounts being paid to investors as returns. As a result, it seems most likely that the large amount of money Company I paid to investors as returns wasn't funded by legitimate trading activity and was, instead, funded using new investors' funds.

I've seen very little evidence to suggest Company I was a legitimate investment opportunity. And, for the reasons I've explained above, I think it was most likely an APP scam and Mr R's funds were criminally obtained for a purpose other than investing. As such, I'm satisfied Mr R's claim meets the CRM Code definition of an APP scam, and his claim should've been considered under those principles.

So, I've gone on to consider whether Nationwide should reimburse Mr R under the principles of the CRM Code. There are generally two exceptions to reimbursement under the CRM Code, which are that:

- Mr R made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or Company I was legitimate; and/or
- Mr R 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've had a 'material effect on preventing the APP scam'.

Did Mr R have a reasonable basis for believing Company I was legitimate

Mr R was introduced to Company I by a friend, who had already invested. I think this personal recommendation would've been persuasive to him. Mr R says he completed online checks on Company I and found no adverse information suggesting it wasn't a genuine investment opportunity and, Company I had positive reviews dating back over a year before Mr R invested. Mr R also confirmed that Company I had been registered with Companies House for approximately four years.

Prior to sending any funds to Company I, Mr R met N at Company I's office. Mr R's explained that Company I's office looked professional, with advertising boards; photos of events; and numerous staff in attendance. N gave a demonstration of how Mr R's funds would be used for trading purposes and explained in detail how the monthly profit could be achieved and would be calculated.

In addition to the physical office and in-person meeting with N, Company I had a professional looking website, a mobile app and an online portal which Mr R was able to log into and see how his investment was allegedly performing. Mr R had to complete know your customer ('KYC') checks and sign a contract before he was able to deposit funds, giving the impression that Company I was legitimate.

I accept the returns Company I was promising (3% per month compounded interest) were unrealistic. However, taking everything into consideration and how sophisticated the scam was, I don't think the rate of return means Mr R didn't have a reasonable basis for believing Company I was a legitimate investment at the time he invested.

Mr R did make a further investment with Company I in December 2022. At the time, Mr R thought his initial investment had grown as projected and had been provided with no information to suggest Company I wasn't genuine. So, I'm satisfied Mr R still had a reasonable basis for believing Company I was legitimate when he invested again in December 2022.

I accept Mr R paid Company I again in July, October and December 2023, by which time the FCA had issued a warning about Company I. However, I've seen nothing to suggest Mr R was aware of this warning when he made those further payments, nor do I think he reasonably ought to have been aware, given there were no grounds for him to check the FCA's website, based on his relationship with Company I at the time of the payments and his genuine belief that the investment was performing as expected.

It wasn't until several months after Mr R's final investment that he discovered Company I might not have been genuine. But there was nothing to suggest he ought to have been aware of this at the time the 2023 payments were made. As a result, I'm satisfied that Mr R still had a reasonable basis for believing the investment was genuine in 2023.

In the circumstances, I'm not persuaded Nationwide has demonstrated that this exception to reimbursement applies.

Did Mr R ignore an effective warning?

As referred to above, Mr R paid two different beneficiary accounts. When the payees were created (but not the subsequent payments to those payees), Nationwide showed Mr R warnings based on the purpose he selected for the payments.

For the first payment, Mr R inaccurately chose the option for paying a "*friend or relative*". Nationwide's warning focused on preventing an impersonation scam, rather than an investment scam. As a result, the warning didn't resonate with Mr R and the advice he was given wouldn't have prevented the scam.

I accept that Mr R didn't choose a purpose that matched the true purpose for the payment. He's explained N told him that selecting "*friend of relative*" as the purpose would provide a smoother payment journey. But even if he'd selected "*investment*", as he did when he paid the second beneficiary account for the first time, I don't think this would've had a material effect on preventing the scam.

In August 2022, when the first disputed payment was made, there wasn't a warning about Company I on the FCA's website. Mr R wasn't told that Company I was regulated or needed to be regulated and so even if he'd checked the FCA register, I don't think this would've given him cause for concern, such as his belief that Company I was a legitimate business.

Mr R paid who he was intending to pay. So, Nationwide recommending he contact the official number for Company I wouldn't have prevented the payment being made. And, Mr R had already conducted due diligence into Company I and found no adverse information about it being a scam, so that recommended step wouldn't have prevented the payment being made either.

I appreciate that at the time Mr R paid the second beneficiary, there was an FCA warning about Company I and Nationwide advised Mr R to check the FCA register before making the payment. However, given Mr R had already been invested with Company I for approximately a year; thought his investment was performing well; and there was no reports of Company I not being legitimate, I don't think it was unreasonable that Mr R didn't check the FCA website in response to this warning, as he had no reasonable grounds to think it was necessary. And, for the reasons explained above, I don't think the other steps recommended by Nationwide's warning would've had a material effect on preventing the scam.

As a result, I don't think Nationwide can refuse to reimburse Mr R under this exception to reimbursement.

Other considerations

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 R's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about Company I at the time such that Mr R would have chosen not to proceed.

Summary

Overall, I don't consider it necessary to await the outcome of the ongoing police investigations into Company I and N, and any subsequent proceedings that may happen as a result. I'm satisfied, based on the evidence available, that Mr R was more likely than not the victim of an APP scam. And his 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 R under the provisions of the CRM Code. And Nationwide is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Mr R under any processes relating to the police investigation and any potential compensation that may be returned to victims.

Putting things right

To fairly resolve Mr R's complaint, Nationwide should:

- refund Mr R's loss of £30,000; and
- pay interest at 8% simple per annum on the refund, from the date Nationwide declined to reimburse Mr R until the date of settlement.

My final decision

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

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

Liam Davies
Ombudsman