

The complaint

Mrs and Mr S complain that Nationwide Building Society ('Nationwide') declined to refund them £20,000 which they say they lost as a result of a scam.

What happened

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But, in summary, in August 2022 Mrs and Mr S came across an investment company (which I will call 'V'), as a friend of theirs said they had invested with them and was pleased with the returns they had achieved. They attended a video meeting with one of the directors of V where they discussed the detail of the investment opportunity. Persuaded to invest, Mrs and Mr S sent two payments of £10,000 to an account of one of the directors of V. They understood that his investment would be used for trading in foreign exchange, and that returns could be as high as 20% in some months. They were told that as they were undergoing the process of UK regulation, they held a trading account with an already FCA registered foreign exchange broker to make investments through.

Mrs and Mr S said they received regular updates about their investments from V. But in June 2023, Mrs and Mr S found out that V was being investigated by the Financial Conduct Authority ('FCA') as it was communicated on the investment portal they had been provided to monitor their investment with V. They confirmed with the FCA that this was accurate. In October 2023 Mrs and Mr S raised concerns with Nationwide that they had fallen victim to an investment scam.

Nationwide responded to Mrs and Mr S's complaint, declining to reimburse any of the money they had sent to V at that time. In short, it said that under the Contingent Reimbursement Model ('CRM') code, it could delay making a decision on a scam claim whilst a statutory body was investigating relevant matters. So, it intended to await the conclusion of the FCA decision before making any decision on its liability to refund Mrs and Mr S.

Unhappy with their response, Mrs and Mr S escalated their concerns to our service. One of our investigators looked into what had happened and recommended that their complaint should be upheld, and Nationwide should refund the £20,000 along with 8% simple interest from the date they issued their view, until the date of payment. This was on the basis that our investigator thought that it was unfair to rely on R3(1)(c) of the CRM code which meant they could delay the decision on Mrs and Mr S's scam complaint until the FCA investigation had been concluded. They went on to say they thought that considering their claim under the CRM code, it would be fair and reasonable for Mrs and Mr S to receive a reimbursement in full.

Nationwide did not agree. It said that its position had not changed – it disagreed that it or our service should proceed with an outcome here on the basis that there was an ongoing FCA investigation into V.

As no agreement was reached, the case 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.

In broad terms, the starting position at 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 Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

Is it appropriate for our service to consider this matter at this time?

Nationwide are relying on R3(1)(c) of the CRM Code to defer making a decision on whether Mrs and Mr S ought to be reimbursed in line with the provisions of the code. It considers that there is an ongoing FCA investigation, with no indication of when or what that outcome is going to be. And it says that the outcome of this investigation will reasonably inform it whether V was operating a scam or not – and therefore whether Mrs and Mr S fall within the scope of the CRM Code.

R3(1)(c) says:

“If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm’s decision, the Firm may wait for the outcome of the investigation before making a decision”.

So, I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand the police and FCA investigations are ongoing.

There may be circumstances and cases where it is appropriate to wait for the outcome of external investigations. But that is not 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 are not looking at quite the same issues or doing so in the most relevant way.

In order to determine Mrs and Mr S's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it is more likely than not that Mrs and Mr S were the victims of a scam rather than a failed investment. But I would not proceed to that determination if I consider fairness to the parties demands that I delay in doing so.

I am aware that Mrs and Mr S first raised his claim with Nationwide in October 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 do not think that delaying giving Mrs and 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 reasons I'll explain in more detail below, I don't think it's necessary to wait for the outcome of the investigations for me fairly to reach a decision on whether Nationwide should reimburse Mrs and Mr S under the provisions of the CRM Code. I'm satisfied there is already convincing evidence to demonstrate on the balance of probabilities that those who invested with V were dishonestly deceived about the purpose of the payments they were making and that Mrs and Mr S were the victims of a scam. So, it is appropriate for me to consider this complaint without further delay.

Were Mrs and Mr S the victims of a scam, as defined in the CRM Code?

The relevant definition of a scam from 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 does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services, but has issues with receipt or quality of the goods or services, or where the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Mrs and Mr S 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 were legitimate, whether the purposes they and V intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the V.

From what I've seen and what Mrs and Mr S told us, I'm satisfied Mrs and Mr S made the payment here with the intention of investing with V. I think they thought their funds would be used to trade in foreign exchange, and that they would receive returns on their investment. And I haven't seen anything to suggest that Mrs and Mr S didn't think this was legitimate.

But I think the evidence I've seen suggests V didn't intend to act in line with the purpose for the payments it had agreed with Mrs and Mr S.

V needed to be regulated by the UK financial regulator, the FCA, to operate an investment of this type within the UK. Mrs and Mr S said they were told V was regulated by the financial regulator in Luxembourg, the CSSF, and was in the process of becoming regulated by the FCA. And from what I've seen of the marketing material potential investors were shown, V said on a number of occasions that it either was, or was in the process of becoming, regulated by the CSSF. But the CSSF has confirmed it was not in contact with V, and the company was not supervised by it. So this strongly suggests V was dishonestly misleading investors about the regulatory status of the company.

In March and April 2023 respectively, both the CSSF and the FCA issued warnings about V. The CSSF warned that the company was pretending to be registered and supervised by the CSSF, but that it was neither registered nor supervised by it. And the FCA warned that all companies must be authorised by it if they offer, promote or sell financial products in the UK but that V was not authorised and was targeting people in the UK.

In a number of its emails to Mrs and Mr S, and its marketing materials, V also claimed to be partnered with an FCA regulated broker it held a trading account with. But this broker has confirmed that it doesn't have any relationship with V, or with either of the individuals involved in running the company. So as V told investors their funds were immediately transferred to trading accounts with this broker, this strongly suggests it was dishonestly deceiving investors about the payments they were making. Funds investors sent to V weren't used for the specific purpose of trading in foreign exchange via the regulated broker – which is what investors thought was happening with their funds.

While some funds sent to V were sent to another foreign exchange trading platform, those funds weren't held and traded on a platform that was regulated in the UK by the FCA – as investors were told their fund would be. The funds sent to this other trading platform also didn't benefit from FSCS protection – as investors were also led to believe. And it is impossible to say whether any trading V carried out on this other platform was done on behalf of investors, or was solely for the benefit of V itself.

Investors in V were also told all the funds they sent to the company would be immediately moved to the FCA regulated broker and available for trading. And I've seen copies of deposit confirmation emails Mrs and Mr S received which confirmed this. But, from what I've seen of the accounts the funds were sent to, no funds were sent to the FCA regulated broker V mentioned and only around 60% of the funds were sent to the other trading platform. This

means a significant proportion of the funds V received weren't used for trading in foreign exchange – contrary to what investors were told.

The funds that weren't used for trading in foreign exchange appear to have been used for a number of other purposes, including transfers to other accounts held by individuals involved in running V and their family members, credit card repayments, luxury vehicle purchases, flights, hotels, and gambling. And these purposes don't appear to be connected to the trading investors were told their funds would be used for.

Of the funds that were sent to the other trading platform, V only appears to have withdrawn around a third of the amount that was then paid to investors as returns. This raises significant questions about how the remaining returns that were paid to investors were funded, and I think strongly suggests deposits from later investors were being used to pay returns and withdrawals of earlier investors.

Some of the funds received into V's accounts from investors were also sent to a cryptocurrency exchange – which is not in line with what investors were told their funds would be used for.

So I think the available evidence shows V wasn't acting in line with the features of the investment it had led Mrs and Mr S to believe they were making. And so the purpose V intended for the payments Mrs and Mr S made wasn't aligned with the purpose Mrs and Mr S intended for the payments.

Given the incorrect information given out by V, particularly about its regulatory status and its relationship with the broker, I also think the discrepancy in the alignment of the payment purposes between it and Mrs and Mr S was the result of dishonest deception on the part of the company.

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. As I've explained above, there is significant evidence about the actual activity carried out by V already available. And while I understand there are ongoing FCA investigations, there is no certainty as to when it would be concluded and what, if any, prosecutions may be brought in future, nor what, if any, new light it would shed on the evidence and issues I've discussed.

And so I think the circumstances here meet the definition of a scam from the CRM code.

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

As I explained above, Nationwide is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mrs and Mr S fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without 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

There are further exceptions within the CRM code, but these don't apply here.

Did Mrs and Mr S ignore an effective warning in relation to the payments?

The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

When Mrs and Mr S were making the payments they were asked to select a payment purpose. Nationwide say they selected investments. Nationwide has sent us a copy of the warning it says Mrs and Mr S were shown at the time, which said:

“Be aware of scams.

Before you invest, stop and [complete our scam checks].

You should confirm the opportunity is legitimate by doing all the following:

- 1. searching for the firm on the FCA register – avoid those that are on the FCA warning list*
- 2. using the details on their official website to call and check that all details are correct*
- 3. checking online for independent reviews and any known scams.*

Many cryptocurrency investments aren’t regulated. If you’re not sure how it works, do not invest.

Don’t want to risk losing your money? Use our free Scam Checker Service.

Stop and speak to us about this payment before you make it. You can call us on 0800 030 40 57 any time or visit your local branch. Learn more about our Scam Checker Service, the payments it covers and its conditions.”

Based on what I have seen, I do not think it would be fair to conclude that Mrs and Mr S ignored an effective warning. And so it follows that it would not be fair and reasonable for this exception to reimbursement to apply. Whilst Nationwide have provided a copy of their warning, they have not expressly raised any argument to say that Mrs and Mr S ignored an effective warning. I also do not think the warning goes far enough to meet the definition of an effective warning because whilst it stresses the FCA register should be checked, it does not explain what this is or who the FCA are. Even if Mrs and Mr S had taken heed of this, I do not think it would have been impactful because V had already explained they were not currently regulated but that they were in the process of becoming so. At the time Mrs and Mr S made the payments, the FCA were yet to publish their warning about V. There was no element of number spoofing in this case, and no negative reviews yet online about V. So, I do not think that the warning was sufficiently specific or impactful here.

Did Mrs and Mr S make the payments without a reasonable basis for belief?

I’ve also considered whether Mrs and Mr S acted reasonably when making the payments, or whether any warning signs ought to have reasonably made them aware that this wasn’t a genuine investment.

Mrs and Mr S were introduced to the investment scheme by known and trusted friends who said they had also invested with V. The friends had invested over a period of months and said they had already received returns. In addition to this, the friends said they had been able to withdraw some of their investment funds from their account. I can understand that this would have provided great reassurance that V were operating a legitimate investment here – and I can see why they were encouraged to reach out to V directly.

When they engaged with V, they spoke to one of the directors about the investment and the potential returns. He took the time to speak with them over a video call and provided them with detailed and professional looking literature. The director and the literature explained

they were in the process of being regulated, and using a regulated FCA firm to make the trades for the time being. I can see why this was convincing – and did not appear unusual to Mrs and Mr S. The company then took them through KYC checks prior to accepting their investment. They were given access to an investment portal where they could keep an eye on their investments. There were seminars potential investors could join. I think V looked and acted like a legitimate investment company in enough ways that Mrs and Mr S, and many potential investors, did not act unreasonably in believing they were dealing with a legitimate investment firm.

I do appreciate that the potential returns were listed as up to 20% which does seem high – but this was not guaranteed and given their friends had managed to achieve returns already, I can see why this would not be a cause for concern.

This was also a relatively sophisticated scam, where Mrs and Mr S were given access to a portal which showed them details of their investments and the trades being carried out. There was a professional looking website and literature. There were online seminars for potential investors to join. They established a convincing and plausible explanation for their regulatory status that would seem legitimate to less experienced investors.

The payments were made to an account in the name of the director they spoke to. Being asked to make payments to the personal account of the individual involved in running V is not what I would usually expect from a legitimate investment company. But Mrs and Mr S said that they knew their friend had done the same, and they received a payment receipt as promised so they did not think this was unusual. They also were able to see the payments they had made appear on the portal they were given access to, so I think it's reasonable that being asked to pay in this way didn't cause them more concern.

So I don't think it would be fair to say that Mrs and Mr S acted unreasonably when making the payment, or that Nationwide has established that they made the payments without a reasonable basis for belief that the investment was genuine.

Conclusion

Overall, for the reasons I have explained above, I think it is fair for our service to assess Mrs and Mr S's complaint based on the evidence that is currently available. And having done so, I think the payments Mrs and Mr S made here are covered by the CRM code and Nationwide has not established that any of the exclusions to reimbursement apply. So I think it is fair and reasonable for Nationwide to fully refund Mrs and Mr S under the CRM code.

Putting things right

As there is an ongoing investigation into V by the FCA, it's possible Mrs and Mr S may recover some 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.

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

As Mrs and Mr S have been deprived of access to his money for some time, I think it would also be fair for Nationwide to pay them interest on this refund. But as much of the information and evidence I've relied on to come to this decision wasn't available to Nationwide when it was first assessing Mrs and Mr S's claim, I don't think it would be fair to require it to pay interest from the date it initially responded to their claim. Instead, I think it would be fair to require HSBC to pay interest from the date of our investigator's opinion of 23 May 2025 – as I think this is a fair approximation for when the information and evidence to fairly assess Mrs and Mr S's claim was available.

*If Nationwide considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs and Mr S how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons set out above, I uphold this complaint and require Nationwide Building Society to:

- Refund Mrs and Mr S both of the £10,000 payments, totaling £20,000, which they made as a result of this scam
- Pay Mrs and Mr S 8% simple interest on this refund, from the date of our investigator's opinion of 23 May 2025 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 19 November 2025.

Katherine Jones
Ombudsman