

The complaint

Ms J and Mr N complain that Nationwide Building Society ('Nationwide') has not reimbursed them after they fell victim to 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 June 2020 Ms J and Mr N invested £25,000 in a company I will call 'D'. D said it was investing in property development. They sent three payments over three days from their Nationwide account. Ms J and Mr N were introduced to the directors of D at a property investment event. D were said to have a record of proven success in the industry, and were very visible on social media. Ms J and Mr N met the directors on a couple of occasions, and were persuaded to invest. They believed that they were signing up to a loan agreement for property development purposes, and 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.

Ms J and Mr N did receive returns on their investment, of £416.66 paid monthly for the first twelve months, which amounted to just under £5,000. They decided to roll over their investment after the first twelve months, and continued to do so. In October 2022, they received an email from D to investors which detailed issues it was having as a business due to an investor demanding repayment of their investment capital. D had actually entered into administration in mid 2022, with administrators being appointed in June of that year.

Ms J and Mr N said they realised they had fallen victim to a scam, and so they got in touch with Nationwide and asked it to reimburse their funds. Nationwide said they considered that the losses Ms J and Mr N suffered were due to a failed investment, which amounted to a private civil dispute rather than a scam. Private civil disputes were not covered by the Contingent Reimbursement Model ('CRM') Code, so Nationwide said it was not liable to reimburse Ms J and Mr N's losses.

Ms J and Mr N were not satisfied with their response, so they escalated their concerns to our service. One of our investigators looked into what had happened and recommended that Ms J and Mr N's complaint should be upheld. They recommended that they should be refunded in full, along with 8% simple interest payable from the date Nationwide declined their claim under the CRM Code until the date of settlement. Ms J and Mr N accepted this assessment, but Nationwide did not. As no agreement could be 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.

When considering what is fair and reasonable, I am 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 payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's accounts. 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 provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It is a voluntary 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. Nationwide was a signatory to the code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) as:

“Authorised Push Payment scam, that is, 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”*

The CRM Code is also clear at DS2(2)(b) that it 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”*

If I conclude that the payment here meets the required definition of a scam then Ms J and Mr N would be entitled to reimbursement, unless Nationwide has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, in order to determine Ms J and Mr N's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that they were the victims of a scam rather than this being a failed or bad investment.

Have Ms J and Mr N been the victims of a scam, as defined in the CRM Code?

The Code does not 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 would not apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I do not consider the first part of the definition quoted above (DS(2)(a)(i)) is met in this case. This isn't in dispute. But what is in dispute is whether Ms J and Mr N's payments meet DS1(2)(a)(ii). So I've gone on to consider if their intended purpose for the payments was legitimate, whether the intended purposes they and D had were broadly aligned and, if not,

whether this was the result of dishonest deception on the part of D.

From what I have seen and what Ms J and Mr N have told us I am satisfied that they made the payments with the intention of investing in property development. I have not seen anything to suggest that they did not think this was a legitimate venture – and as Nationwide argues this is a civil matter, it too seems to accept this.

I've then considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so this was a scam or a genuine investment.

The evidence I hold suggests that when D first started, it was involved in property development, although it is not clear if all funds received were used for this purpose. But by the time Ms J and Mr N became involved with it in 2020, it was no longer operating in this same way.

From 2019, D's behaviour changed significantly. The beneficiary bank statements do not indicate that D was continuing to purchase many properties after April 2019. The funds coming into the account significantly increased around this time. Large sums were regularly being withdrawn for the benefit of D's directors and other funds were used to pay returns to existing investors. By 2021, D had also links to another company which our Service considers was most likely running a Ponzi forex investment scheme. D's investors funds were being diverted to the accounts with this company, despite it purporting to offer a very different and much higher risk investment than what they had agreed to with D. Further to this, by 2022, administrators had been appointed due to D not repaying an investor despite the existence of a statutory order to do so. Ms J and Mr N continued to speak with D during these periods, who organised for their funds to be 'rolled over' to reinvest them more than once, without disclosing what was happening at D.

Our service is also aware that D's directors and this other company's directors formed a new company together at the same time as D's behaviour changed in 2019. So this strongly indicates that D was not just choosing to invest some of its investor's funds in a different investment – which would still have issues as explained above. But instead indicates that D and this other company were working together at this time. And as we consider it most likely this other company was operating a scam, this indicates D was too by the time Ms J and Mr N invested.

I appreciate that Ms J and Mr N did receive any returns, and I am aware that some other investors received returns too. But as above, I am aware that some investor's funds were used to pay returns. And it seems to be the case that any returns investors received were likely sent to encourage further investment, either from existing or new investors who were recommended the opportunity from others who had already invested.

From 2019, it does not appear that D used the investor funds for the purpose which they were intended, and so this demonstrates that they were not the legitimate supplier of a service at the time Ms J and Mr N made their payments. D's conduct went beyond simply misleading investors about a genuine investment opportunity and 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.

I am satisfied therefore that D was most likely operating a sophisticated scam. I consider it most likely D's purpose for the funds was different to what Ms J and Mr N understood and intended. And that this was because D intended to dishonestly deceive them and took the funds for a fraudulent purpose. As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Are Ms J and Mr N entitled to a refund under the CRM Code?

Under the Code, the starting principle is that a firm should reimburse customers who are the victims of an APP scam, like Ms J and Mr N. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning. A second circumstance in which a bank might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

Nationwide hasn't argued that it provided an effective warning in this case. Nor has it argued that Ms J and Mr N did not have a reasonable basis for believing they were paying into a legitimate investment. And so, I do not think it would be fair for them to rely on any exceptions under the code here.

On Ms J and Mr N's reasonable basis for belief – given that Nationwide are still arguing that D was a genuine business who fell on hard times, it would be hard to argue that Ms J and Mr N did not have a reasonable basis for believing that they were investing in a legitimate company.

It is arguable in this case that Nationwide couldn't have provided a warning that was effective and would have prevented Ms J and Mr N with going ahead in the circumstances of this particular scam. But this doesn't change Nationwide's overall position here, as whether any reimbursement is due is then dependent on if any other exceptions apply.

With this in mind, I do not think that Nationwide have established that any of the exceptions to the presumption of a full refund under the CRM Code apply here. I am satisfied therefore, that Nationwide should refund Ms J and Mr N in full under the provisions of the CRM Code.

Putting things right

In order to put things right, I direct Nationwide to:

- Refund Ms J and Mr N their remaining losses; and
- Pay 8% simple interest per annum on this amount from the date their claim was declined under the CRM Code to the date of settlement.

As D is going through insolvency proceedings, it is possible Ms J and Mr N could recover some further funds in the future. In order to avoid the risk of double recovery, Nationwide is entitled to take, if it wishes, an assignment of rights to all future distributions under this process before paying the award.

My final decision

My final decision is that I uphold this complaint, and I require Nationwide Building Society to put things right for Ms J and Mr N as set out above

.Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J and Mr N to accept or reject my decision before 12 January 2026.

Katherine Jones

Ombudsman