

The complaint

Mr B complains that Nationwide Building Society ('Nationwide') hasn't reimbursed the money he lost to what he believes was an investment scam.

He's represented in this complaint. For simplicity, I'll refer to Mr B throughout this decision.

What happened

The background is known to both parties, so I won't repeat all the details here. In summary, in May 2020, Mr B sent £10,000 under a loan agreement to a company ('X'), which claimed to have developed an algorithm to trade successfully in forex and other investments. He expected to receive a return of his investment plus 25% interest after 12 months. He signed a new agreement for 're-investment' in year two.

He says he was introduced to the opportunity through other investors, that online meetings were held with other investors and X's director, and that he was reassured in general by the positive feedback, the loan contract, and the lack of negative information about X. He also knew of others who'd invested and received returns. He became concerned he'd been scammed when he wasn't able to withdraw his money and X stopped communicating.

Mr B made a complaint to Nationwide. In August 2024, it told him that it didn't consider X was operating a scam and that there wasn't enough information to suggest it had acted with fraudulent intent. It also said it needed to await more information from external investigations before looking at X as anything but a failed investment. When a complaint was later referred to our Service, our Investigator upheld it. In brief, she thought there was enough evidence to find X was likely a scam and that Mr B was entitled to reimbursement under the CRM Code.

Mr B accepted that outcome. Nationwide didn't agree. As the matter couldn't be resolved informally, it's 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.

Having done so, I agree with the Investigator and for largely the same reasons.

In broad terms, the starting position at law is that a firm (like Nationwide) is expected to process payments and withdrawals a customer authorises in accordance with the Payment Services Regulations (2017) and the terms and conditions of the customer's account. However, where a customer made the payment as a result of the actions of a fraudster, it may sometimes be fair and reasonable for a firm to reimburse the customer even though the payment was authorised.

The CRM Code

The CRM Code was a voluntary code which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. Nationwide was a signatory at the time of the payment in dispute. But for me to decide if the CRM Code applies in this case, I must first consider whether the payment in question, on the balance of probabilities, meets the CRM Code's definition of an APP scam.

An 'APP scam' is defined in the Definitions and Scope section of the CRM Code, at section DS1(2)(a), as:

"a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulations 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) of the CRM Code says:

"This Code does not apply to:...(b) private civil disputes, such as where the 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 doesn't provide a definition for 'fraudulent' purposes. So, it ought to get its natural meaning in the context in which it's being used. Having thought about that carefully, I'm satisfied the CRM Code is intended for customers to be reimbursed where they've been dishonestly deceived as to the purpose for which their payment was obtained.

Section DS2(2) makes it clear 'private civil disputes' between the customer and a legitimate supplier aren't included, even if the relevant goods/services were never received or were defective. This shows a dispute, which could only be pursued in the civil courts as a private claim, isn't an APP Scam. To take the matter beyond a private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which it was made.

That doesn't mean someone claiming reimbursement under the CRM Code needs to meet the criminal standard of proof. I understand the CRM Code's publisher, the Lending Standards Board, has provided guidance that the criminal standard isn't required. In line with our general approach in deciding the complaints referred to us, I only need to be persuaded on a 'balance of probabilities'. The same standard of proof that's required in civil cases.

However, at the heart of the CRM Code is the requirement for the customer to have been the victim of fraud. And so, I'd need to see evidence that persuades me, it's more likely than not, a criminal fraud has occurred, and therefore that Mr B has lost his money to an APP scam rather than a bad investment. If I find, on the balance of probabilities, the payment in question meets the definition of an APP scam then Mr B would be entitled to reimbursement unless Nationwide is able to show any of the CRM Code's exceptions at section R2(1) apply.

Can Nationwide delay making a decision under the CRM Code?

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are, however, some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might

reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(C), to wait for the outcome of that investigation before making a reimbursement decision.

It's unclear whether Nationwide intends to rely on R3(1)(C) here. But this provision only applies when a firm hasn't made a decision on whether to reimburse a customer. In this case, given the comments in its final response and file submissions, it seems Nationwide has refused reimbursement on the basis that it considers the matter to be a civil dispute. As a result, I'm satisfied Nationwide cannot now rely on this provision.

Is it appropriate to determine Mr B's complaint now?

That said, I agree there may be circumstances where it's appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case. It may be possible to reach conclusions on the key issues on the information already available. And it may be that any ongoing investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. So, to decide Mr B's complaint, I must ask myself whether, on balance, the available evidence indicates it's more likely than not that he was the victim of a scam, not a failed investment. While I wouldn't proceed to decision if I consider fairness to the parties means I shouldn't, I'm also mindful Mr B raised his claim with Nationwide in 2024 and that this Service was set up to resolve complaints quickly and with minimum formality.

In other words, I don't think delaying giving Mr B's answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I don't think it'd be fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available, a postponement is likely to help significantly when it comes to deciding the issues.

I understand there's an ongoing police investigation but I'm not persuaded this means it's necessary to wait for me to fairly reach a decision on whether Nationwide should reimburse Mr B under the CRM Code. I'm mindful criminal proceedings have a higher standard of proof than, as noted above, I'm required to apply. And, for the reasons below, I'm satisfied there's already enough evidence to decide if, on the balance of probabilities, X was a scam.

Has Mr B been the victim of an APP scam as defined in the CRM Code?

As before, Nationwide was a signatory to the CRM Code. This provides additional protection to scam victims. And, under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code only applies if the definition of an APP scam is met. It doesn't apply to private civil disputes such as where a customer paid a legitimate supplier for goods or services but hasn't received them, they're defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a payment made for a genuine investment that subsequently failed.

It's not in dispute Mr B paid the intended recipient. So, I don't consider section DS1(2)(a)(i) of the definition to be relevant here. I've therefore considered if Mr B's intended purpose for the payment was legitimate, whether the intended purposes of Mr B and X were substantially aligned and, if not, whether this was the result of dishonest deception on X's part.

From what I've seen, and what Mr B has told us, I'm satisfied he made the payments with the intention of investing in forex trading and stocks and shares. I haven't seen anything to suggest Mr B didn't think this was a legitimate purpose. I've then considered whether there's convincing evidence to show the true purpose of the 'investment scheme' was significantly different to this – and so whether X was a scam or genuine investment.

The evidence I've seen suggests X was operating a Ponzi scheme, not running a genuine investment. While some of the funds it received were invested as described, the evidence suggests this was less than 17% of what was received for this purpose. It indicates the funds that were invested resulted in a loss. And records further indicate that, despite this loss and the investors' intentions for funds, almost 68% of capital received was paid out to investors.

X was not FCA regulated, but some of the activities it was carrying out required regulation – as it was soliciting investments from the public and retail investors. And it appears to have mis-led investors on its need to be regulated. Its accounts also show it withdrew funds intended for investing and paid these to accounts linked to X and its associates.

In view of the above, and from the evidence of where Mr B's payment was made, I'm not persuaded X's true purpose in taking Mr B's funds was to invest it as he'd understood it would be. Instead, I consider it more likely X's purpose for the funds was different to what Mr B (and other investors) understood and intended. And that this was because X intended to dishonestly deceive Mr B 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.

Is Mr B entitled to a refund under the CRM code?

The circumstances in which a firm may choose not to reimburse are limited. Importantly, the CRM Code stipulates that the assessment of whether exceptions can be established should involve consideration of whether they would have had a material effect on preventing the APP scam that took place.

Section R2(1) of the CRM Code states that a firm may choose not to reimburse a customer if it can be established the customer ignored 'effective warnings' given by a firm. It also states a firm may choose not to reimburse a customer if it can establish that, in all circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the payments 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 under the CRM Code that aren't relevant here.

It's for Nationwide to establish if exceptions to reimbursement apply. It hasn't done so here but I've considered them in any event.

Mr B made a payment of £10,000 in May 2020 to X as expected. The CRM Code sets out minimum criteria that a warning must meet to be an 'effective warning' and this includes the warning being Clear, Impactful and Specific. Nationwide hasn't said that such a warning was provided at the time of payment. Its file notes suggest the payment didn't trigger an alert. As such, I can't say Mr B was given an 'effective warning' (one that was sufficiently impactful and specific under the CRM Code). I'll add that, given the sophistication involved in this scam, it's unlikely I'd find Mr B unreasonably ignored an effective warning even if Nationwide had been able to show one was given.

I'm also satisfied Mr B had reasonable basis for believing the investment was legitimate. He says he was provided with brochures and I can understand why the signed loan agreement would have provided some reassurance. He's explained he found the opportunity through what seem to be genuine individuals offering wealth education online. X was registered and there wasn't concerning information available at the time. He says meetings were held with

X's director and other potential investors. And that he was aware of others who had invested and received returns. I'm mindful it could be argued the promised returns were questionable. But, taking all the circumstances into account, I'm satisfied Mr B had a reasonable basis to believe the payment was for a genuine investment and X was legitimate.

To summarise, I'm satisfied, on the evidence available, Mr B was more likely than not the victim of an APP scam. His claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply – and so that Nationwide should reimburse Mr B in full under the provisions of the CRM Code.

In terms of compensatory interest, the Investigator recommended 8% simple per year on the payment from the date Nationwide declined the claim. Mr B accepted that recommendation and I think it results in a fair outcome here. I'm also aware ongoing proceedings might result in some recoveries for those who invested with X. And, to avoid the risk of double recovery, Nationwide is entitled to take, if it wishes, an assignment of rights to all future distributions to Mr B under these ongoing processes before paying the award.

Putting things right

Outside of the CRM Code, I think it's unlikely any intervention by Nationwide at the time of payment would have positively impacted Mr B's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about X such that Mr B would have chosen not to proceed. With that in mind, to put things right, Nationwide Building Society needs to:

- Refund Mr B the disputed payment of £10,000 (less any credits received).
- Pay 8% simple interest per year on this amount from the date the claim was declined to date of settlement.

If it wishes, Nationwide Building Society is entitled to take an assignment of the rights to all future distributions under the administrative process before paying the award. If Nationwide Building Society is legally required to deduct tax from the interest award, it should tell Mr B how much it has taken off. It should give Mr B a tax deduction certificate if he asks for one, so he can claim it back from HMRC if appropriate.

My final decision

For the reasons I've given, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 November 2025.

Thomas Cardia

Ombudsman