

The complaint

Mr and Mrs M complain that Nationwide Building Society ('Nationwide') hasn't reimbursed the funds they say were lost to a scam.

What happened

Mr and Mrs M hold a joint account with Nationwide. They say that in 2018 they were introduced to an investment opportunity with a company I'll call B in this decision. Directors of B claimed to have developed an algorithm that allowed them to trade at a superior rate and achieve profit of 50% a year. After visiting B's offices Mr and Mrs M invested £31,000 on 18 August 2018. I haven't seen the contract that was signed at this stage but can see that on 14 February 2020 Mr and Mrs M received £26,165 from B.

In February 2020 Mr and Mrs M signed a "Managed Account Agreement" which says that B will perform foreign exchange services for them over a 12-month period with an expected rate of return of 50%. The same agreement was signed in February 2021, but the amount invested was £32,000 after Mr and Mrs M received returns of £14,500 and reinvested the additional £1,000.

In February 2022 Mr and Mrs M signed a "Loan Agreement – Top up/Renewal" agreement. The agreement said they would loan B £60,000 for "general investment purposes" for a one-year period and would receive £78,000 (representing the return of their capital and 30% interest) at the end of the term. They also made two further payments to an account linked with B of £10,000 and £8,400.

Mr and Mrs M didn't receive any further returns from B. They instructed a representative to send Nationwide a letter of complaint in July 2024. Mr and Mrs M said that B operated a Ponzi scheme for a variety of reasons including the fact B wasn't FCA regulated when it should have been, the contracts offered returns that were too good to be true, and managed funds agreements said that only 10% of invested funds were at risk. Mr and Mrs M said Nationwide should have intervened on out of character payments and should reimburse relevant payments under the CRM Code.

For ease I have set out in the table below the transactions Mr and Mrs M made from their Nationwide account and their account with another bank that all related to the investment with B.

| Transaction | Account | Date | Amount |
|-------------|--------------|-----------------|----------------|
| 1 | Nationwide | 14/08/18 | £31,000 |
| 2 | <i>Other</i> | <i>03/08/20</i> | <i>£10,020</i> |
| 3 | <i>Other</i> | <i>03/08/20</i> | <i>£10,020</i> |
| 4 | Nationwide | 24/02/22 | £10,000 |
| 5 | Nationwide | 24/02/22 | £8,400 |
| Total | | | £69,440 |

Mr and Mrs M received returns of £26,165 in February 2020 and £14,500 in February 2021. No returns were received into Mr and Mrs M's other account.

B has gone into administration and there is an ongoing police investigation.

Nationwide said there was insufficient evidence to conclude that Mr and Mrs M were the victims of a scam because they paid a legitimate company and received significant returns. To decide the investment was a scam, Nationwide said it would need information from a police investigation or evidence of directors being charged. Nationwide went on to say it wouldn't be expected to intervene on payments to a genuine company.

Mr and Mrs M were unhappy with Nationwide's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. He said Nationwide should have intervened on the payment made in 2018 given its value, but had it done so it wouldn't have had concerns. But when Mr and Mrs M made the second payment, the Contingent Reimbursement Model Code ('CRM Code') was in force. The investigator said Mr and Mrs M were victims of an APP scam as defined in the CRM Code and Nationwide couldn't fairly apply an exception to reimbursement, so Nationwide was responsible for their full loss after taking into account credits from C. Profits from both investment payments were deducted, meaning that the investigator recommended that Nationwide pay Mr and Mrs M £8,335 plus interest.

Mr and Mrs M initially said the method of calculating the redress was unfair but later accepted the investigator's findings. Nationwide did not agree. It asked for proof that the funds invested by Mr and Mrs M in 2022 weren't part of the funds that were genuinely invested.

The complaint was passed to me. I didn't agree with the redress awarded by the investigator, so I issued a provisional decision on 3 October 2025. In the "What I've provisionally decided – and why" section I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case.

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 be good industry practice at the time.

In broad terms, the starting position at law is that a building society such Nationwide is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. In law, Mr and Mrs M are responsible for payments they have authorised.

Initial payment of £31,000 on 18 August 2018

The CRM Code, which I will discuss below, came into force on 31 May 2019 and only applies to relevant payments after this date. So the provisions of the CRM Code don't apply to this payment. I've considered Nationwide's wider obligations at the time.

Nationwide should have been on the lookout for, and to have protected its customers from potentially falling victim to fraud or scams. This included monitoring accounts and identifying suspicious activity that appeared out of character. If potential fraud was identified, I would have expected Nationwide to intervene and attempt to prevent losses for the customer.

Nationwide also had a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customers' accounts safe.

Like the investigator, I think this payment was out of character. I haven't been provided with any evidence to suggest that Nationwide intervened. But I can't fairly require Nationwide to reimburse Mr and Mrs M solely on the basis I haven't seen any evidence that it intervened when I think it should have. I need to go on to consider what is most likely to have happened if Nationwide had asked the kind of questions I think it should have at the time the payment was made. In deciding this point, I need to consider what was known about B at the time, rather than information that has subsequently come to light.

I'm not persuaded that Nationwide would have had any concerns or that the payment would not have been made if it had intervened. B was a legitimate company and Mr and Mrs M had visited its offices and met its directors. There was also nothing in the public domain at the time to suggest a potential scam.

Payments in February 2022

Is it appropriate to determine this complaint now?

Nationwide has said it needs evidence from a police investigation to determine if B was operating a scam. So, I have considered whether it would be appropriate to delay my decision in the interests of fairness.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. 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. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

In order to determine Mr and Mrs M'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 and Mrs M were the victims of a 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 and Mrs M first raised their 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 and Mrs M 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 external processes might result in some recoveries for B's creditors/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 and Mrs M under those processes in respect of this investment before paying anything I might award to them in this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for any police (or other) investigations to be completed for me fairly to reach a decision on whether Nationwide should reimburse Mr and Mrs M under the provisions of the CRM Code.

Have Mr and Mrs M been the victims of an APP scam as defined by the CRM Code?

Nationwide has signed up to the CRM Code, which provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam in all but a limited number of circumstances. The CRM Code applies to authorised push payment (APP) scams which are defined as:

- (a) ...a transfer of funds executed across Faster Payments...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.

To decide whether Mr and Mrs M are the victims of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr and Mrs M thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs M understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr and Mrs M thought their funds would be used for trading under a managed funds agreement or for general investment purposes as set out in the loan agreement. I haven't seen anything to suggest that they didn't consider these purposes to be legitimate.

I've gone on to consider what purpose B had in mind and whether it was in line with what Mr and Mrs M thought.

The investigator set out why he thought B operated a scam. I agree with his findings. Broadly, B received around £28m in investment capital from investors with loan agreements or managed funds agreements. Of that £28m, less than 17% was invested with around £4.1m being returned. This indicates a huge trading loss, yet around £19m was paid out to investors. Overall, I think it more likely than not that B operated a Ponzi scheme.

Mr and Mrs M were offered rates of return of 50% and 30%. There is no evidence to demonstrate that B was successfully trading and was able to generate such substantial profits. B also wasn't regulated by the FCA as it needed to be to undertake the activities claimed. As a private investment fund, B should not have solicited investments from retail investors or the general public as it did.

Nationwide has asked for evidence that Mr and Mrs M's funds weren't part of the small proportion of funds that were invested. As I have decided that the overall scheme was an APP scam as defined by the code, I don't consider this information would be useful.

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. There is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Application of the CRM Code

The CRM Code says that Mr and Mrs M are entitled to a full refund unless Nationwide can establish that an exception to reimbursement applies.

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

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.*
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.*

There are further exceptions outlined in the CRM Code, but they don't apply to this case.

Did Mr and Mrs M have a reasonable basis for believing the investment was genuine?

Having carefully considered the evidence I'm not persuaded Nationwide could fairly apply this exception to reimbursement for the following reasons:

- Mr and Mrs M were introduced to the investment opportunity by friends, and a director of B was a distant family member. Other investors reported that they received guaranteed returns.*
- Mr and Mrs M visited B's office before deciding to invest and met the directors, who appeared to be knowledgeable and professional.*
- Mr and Mrs M viewed B's website, which they say was professional. They also say they were asked for ID documents, which is what they would expect of a genuine investment.*
- Mr and Mrs M signed contracts which set out the terms of their agreement with B.*
- By the time Mr and Mrs M sent funds covered by the CRM Code they had received significant returns which made them believe in the legitimacy of the investment. They received £25,165 in February 2020 and a further £14,500 in February 2021. These returns were in line with their expectations and reasonably gave them the confidence to invest further funds.*

I'm also not satisfied that Nationwide has demonstrated Mr and Mrs M ignored an effective warning when the payment was made. It has provided an investment warning it says Mr and Mrs M were provided with, but its records only show that a new payee warning was given. Under the provisions of the CRM Code, this means that Nationwide should reimburse the transactions covered by the code in full (subject to what I say below).

Redress and calculation

As there is an ongoing police investigation, it's possible Mr and Mrs M may 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 the rights to all future distributions under the liquidation process in respect of the investment before paying the award. If the bank elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr and Mrs M for their consideration and agreement.

I think that Nationwide should have prevented Mr and Mrs M's loss from and including payment two. In calculating fair redress I've taken into account that Mr and Mrs M have received some reimbursement.

I can see that Mr and Mrs M received money back that they understood to have been 'profit/return' from their investment. Given Mr and Mrs M were falling victim to a scam and their 'investment' wasn't genuine, I don't think this money should be attributed to any specific payment. Instead, I think this money should be deducted from the amount lost by apportioning it proportionately across all of the payments Mr and Mrs M made to the scam. This ensures that these credits are fairly distributed.

To work this out, Nationwide should take into account all of the payments Mr and Mrs M made to the scam (including those from other businesses), which I have set out in the table above.

In this case, the 'profit/returns' received equals £40,665 and the total amount paid to the scam equals £69,440. Nationwide should divide the 'profits/returns' by the total amount paid to the scam. This gives the percentage of the loss that was received in 'profits/returns'. Deducting that same percentage from the value of each payment after and including payment two gives the amount that should be reimbursed for each payment.

Here the 'profit/returns' amount to 58.56% of the total paid to the scam. It follows that the outstanding loss from each payment after and including payment two should be reduced by the same percentage. That means Nationwide should reimburse 58.56% of each payment after and including payment two. Please note that, for ease of reading, I've rounded the relevant percentages down to two decimal places.

After taking the steps set out above, I calculate the Mr and Mrs M's outstanding loss from these payments to be £7,624.71. Their outstanding loss in respect of the other payments they made from their other account is £8,304.31. But the other bank has already reimbursed Mr and Mrs M £20,040 (their full loss from that account). In the circumstances, Mr and Mrs M have already received more than I would award taking into account all scam payments made, so I can't fairly require Nationwide to pay them anything.

Overall, whilst I'm satisfied Mr and Mrs M were the victims of an APP scam as set out in the CRM Code, I'm provisionally minded not to make an award. I realise how disappointing this provisional decision will be to Mr and Mrs M.

Nationwide accepted my provisional decision and said it had no further points to add. Mr and Mrs M said they initially invested £31,000 in B and received around £40,000 in returns from this investment. They then invested £18,000 from their Nationwide account. This means that they invested £48,000 from Nationwide and received around £40,000, leaving a loss from this account of around £8,000. They also invested using funds from an external bank, which has reimbursed their full loss. Mr and Mrs M believe that as one bank paid, so should the other.

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.

I've considered the points raised by Mr and Mrs M but am not persuaded to reach a different decision. I realise this outcome will be disappointing to both of them.

I explained in my provisional decision that the 'profits/returns' Mr and Mrs M received weren't genuine, as they were falling victim to a scam. On this basis, I said these 'profits/returns' shouldn't be attributed to any particular payments but should be deducted from the amount lost by attributing them proportionately across all payments Mr and Mrs M made to the scam, including those from other accounts. This way, the credits are fairly distributed.

I set out in my provisional decision how I calculated the liability of both banks. Mr and Mrs M's other bank has reimbursed the full loss from that other account without apportioning the credits Mr and Mrs M received, meaning that it has paid much more than I would have awarded. Mr and Mrs M's other bank has paid £20,040. Looking at the liability of Nationwide and the other bank together, I would have awarded just under £16,000. As Mr and Mrs M have already received more than this, I can't fairly require Nationwide to make a payment to them.

My final decision

For the reasons stated I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 18 November 2025.

Jay Hadfield
Ombudsman