

The complaint

Mr and Mrs K are unhappy Nationwide Building Society (“Nationwide”) won’t refund the money they lost to an investment scam.

What happened

I issued a provisional decision in October 2025 to explain why I thought Mr and Mrs K’s complaint should be upheld. And I said I’d consider anything else anyone wanted to give me before proceeding with my final decision.

This is an extract from my provisional decision:

“The background to this complaint is well known to both parties so I won’t repeat everything in detail again here. However, in summary, Mr and Mrs K believe they have been the victims of a scam. In late 2020, they sent £110,000 across a series of 11 payments from their Nationwide account to what they believed to be a genuine investment opportunity with a company I will refer to as “M”. The payments to M were made via a company I will refer to as “N” – an FCA regulated intermediary.

Mr and Mrs K did receive a small amount of returns on their investment but the returns soon stopped and Mr and Mrs K have been unable to contact anyone at M since. Mr and Mrs K now believe they’ve been the victims of a scam and would like Nationwide to reimburse them in full.

Nationwide has declined to offer Mr and Mrs K a refund of the amount lost. It said it didn’t think the payments they made were covered by the Lending Standard Board’s Contingent Reimbursement Model Code (“the CRM Code”) because the payments initially went to N. It also said it thought Mr and Mrs K’s circumstances most likely amounted to a civil dispute between Mr and Mrs K and M, rather than a scam that Nationwide should become involved in now.

Unhappy with what Nationwide said, Mr and Mrs K brought their complaint to this service and one of our investigators looked into things.

Our investigator partially upheld the complaint. They were persuaded Mr and Mrs K had likely been the victims of a scam and the payments they had made were covered by the CRM Code. They also thought that Nationwide could’ve done more to protect Mr and Mrs K but that Mr and Mrs K could’ve done more to protect themselves too. So, they recommended Nationwide refund Mr and Mrs K 50% of their overall loss plus interest.

It’s not clear whether Mr and Mrs K accepted our investigators opinion but Nationwide did not. And, as an informal agreement could not be reached, the case has been passed to me for a decision.

What I’ve provisionally 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 deciding what's fair and reasonable, I'm 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 time.

In broad terms, the starting position in 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.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment ("APP") scam, except in limited circumstances. But the CRM Code only applies if the definition of an APP scam, as set out in the Code, is met.

Are Mr and Mrs K's payments covered by the provisions of the CRM Code?

Nationwide initially said it believed Mr and Mrs K's circumstances more than likely amounted to a civil dispute, rather than a scam. And for this reason, it didn't think the payments made to M were covered by the provisions of the CRM Code. It later added that it also felt that the fact Mr and Mrs K's payments were initially paid to N (before the money was passed to M) also meant that the provisions of the CRM Code didn't apply.

I've carefully considered the arguments put forward by Nationwide and I don't agree. I'm not persuaded that Mr and Mrs K initially transferring the funds to N before they were moved on to M means the provisions of the Code don't apply in this case.

The CRM Code does not require the initial recipient of a payment to be an account owned by and for the benefit of the fraudster. Neither does it require that the account be controlled by a party which is complicit in the fraud. Instead, the relevant test is whether an APP scam has taken place.

The CRM Code, defines an APP scam as:

"...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."*

In this case, I think the payments meet the definition of an APP scam under DS1(2)(a)(ii) in that Mr and Mrs K transferred their funds to another person (N) for what they believed was a legitimate purpose but was in fact fraudulent. Specifically, Mr and Mrs K believed they were making payments as part of a legitimate investment scheme but, in fact, they were being defrauded.

If the CRM Code required that the first recipient of scam funds also be the party that benefits from the fraud, a great many claims would be excluded. I say this because many first-

generation accounts are not controlled by the fraudster themselves. The use of money mules (complicit or innocent) is well-known and the CRM Code does not require the sending firm to make an assessment of whether the recipient account holder was complicit in the fraud or not. Instead, I need to consider whether the funds were effectively under the control of the fraudster at the point they arrived at N.

This service has seen evidence that funds that credited N's account were generally passed to M within a few days (seemingly minus a small fee retained by N). Given what is known of the relationship between N and M, it's very likely that this subsequent transaction was carried out under a pre-existing agreement. More importantly, Mr and Mrs K don't seem to have had a customer relationship with N and they had no significant interactions with N.

So, I'm satisfied N was acting on behalf of M and not Mr and Mrs K and they had no reasonable way of preventing the onward transfer of funds to M. It follows then that the money was both out of Mr and Mrs K's control at the point it arrived at N and effectively under the control of M.

That means that the payments Mr and Mrs K made are capable of being covered by the provisions of the CRM Code. The Lending Standards Boards' consultation makes clear that certain multistage frauds are within the scope of the Code. But, for the reasons I've already outlined, in this case there's no need to consider the payment from N to M (the onward transmission of funds) as the funds were effectively under the control of M once they reached N.

Have Mr and Mrs K been the victims of an APP scam?

Nationwide has also argued that Mr and Mrs K's circumstances amount to a civil dispute between them and M, rather than a scam – and the provisions of the CRM Code wouldn't cover a genuine investment that has subsequently failed.

To decide whether Mr and Mrs K have been 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 K thought this purpose was legitimate.*
- The purpose the recipient (M) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs K 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.*

From the evidence I have seen, I'm satisfied Mr and Mrs K intended to invest in M. They understood that M would use their funds to provide short term loans to business customers and this would result in them receiving returns. I haven't seen anything to suggest Mr and Mrs K didn't consider this to be a legitimate purpose.

I've then gone on to consider the purpose M had in mind at the time it took the payments. After careful consideration, I'm not satisfied M intended to act in line with the purpose agreed with Mr and Mrs K. I will explain why in more detail below.

- M's records on Companies House show it hasn't posted accounts since 2021 and doesn't appear to have been audited. The nature of M's business was listed as development of building projects and, whilst the listing had also included activities*

auxiliary to financial intermediation by the time Mr and Mrs K made their investment, this doesn't appear to be in line with the investment purposes Mr and Mrs K were led to believe they were investing in.

- *The FCA provided a warning in October 2021 about M providing financial services when it was not authorised to do so. Mr and Mrs K invested before this date. Z (an organisation that took over M in 2022) told investors the FCA warning was due to clone companies impersonating M - which doesn't appear to be true. And there's no current evidence to suggest a clone company was in operation as Z claimed.*

Overall, I've not been provided with any evidence to show that M was operating in line with the way it described, and agreed with, its investors prior to their investment.

So based on the evidence I have available to me, on balance, I'm satisfied that it's more likely than not that M was operating a scam and therefore the payments Mr and Mrs K made are covered by the provisions of the CRM Code.

Should Mr and Mrs K be reimbursed under the CRM Code?

As Nationwide was a signatory to the CRM Code at the time the payments under discussion here were made, it was required to reimburse victims of APP scams like this one unless it could establish that it could rely on one of the listed exceptions set out in the CRM Code applied.

Under the CRM Code, a firm 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 services; and/or the person or business with whom they transacted was legitimate.*
 - *The customer ignored an effective warning by failing to take appropriate steps in response to that warning.*

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Nationwide to establish that an exception to reimbursement applies. And in this particular case, Nationwide didn't respond with any arguments in this regard following our investigator's opinion. So, unlike the investigator, I'm not persuaded that it has demonstrated that any of the listed exceptions can fairly be applied. For the sake of completeness, I'll briefly cover why below.

I'm satisfied Mr and Mrs K did have a reasonable basis for believing this was a genuine investment opportunity at the time they made the payments now under discussion here:

- *Mrs K's brother had already invested with M at the time Mr and Mrs K decided to make their payments and he had been receiving the expected returns for a number of months. I'm satisfied that this would have been indicative of the investment performing as supposedly agreed.*
- *The returns being offered weren't too good to be true.*
- *Mr and Mrs K appear to have had telephone conversations with a representative of M who was persuasive and convincing and who was able to answer all of their questions in regard to the tax implications of their investment.*
- *There was nothing in the public domain at the time about either M or N that should've put Mr and Mrs K on notice that the scheme might not be legitimate. The most*

persuasive aspect of the scam that I've seen is that M used N, the firm regulated by the FCA at the time of the scam, to gain legitimacy.

Nationwide hasn't said it provided Mr and Mrs K with a scam warning at the time these payments took place so it hasn't been able to demonstrate that they ignored any effective scam warnings either.

Recovery of funds

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But for completeness, even if there was a delay, I don't think it likely would have made a difference here. The scam payments were made in late 2020. The scam wasn't reported until 2024. And I'm satisfied that the funds would've likely been utilised by this point.

Putting things right

In order to put things right for Mr and Mrs K, I'm currently minded to require Nationwide to refund Mr and Mrs K their total outstanding loss taking into account any returns received.

Mr and Mrs K have said they received returns amounting to £7,012.32.

Because Mr and Mrs K have been deprived of this money, I'm also currently minded to recommend Nationwide add 8% simple interest to the above from the date their claim was declined until the date of settlement."

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'm minded to reach the same overall conclusion as I reached in my provisional decision. I'll explain why.

Mr and Mrs K responded to my provisional decision to say they accepted my findings. Nationwide responded to say it did not.

Nationwide said it had seen information that suggested N was holding funds on behalf of customers before they were invested, which in turn suggested that control of the funds wasn't lost at the point N received them - as set out in my provisional decision. Nationwide requested that this service provide evidence of the basis on which N held customers funds at the time Mr and Mrs K's payments were made.

I acknowledge Nationwide's arguments surrounding this point but I explained in some detail in my provisional decision why I felt that the payments Mr and Mrs K made were covered by the provisions of the CRM Code – I was satisfied that their funds were out of their control at the point they arrived at N. And I haven't been provided with any evidence in this case that supports that Mr and Mrs K's funds were held at N on their behalf. In fact, I've seen statement evidence from the receiving account that shows me that once received by N, Mr and Mrs K's funds were sent directly to M within a day.

So, overall, as neither party has put forward any new evidence or arguments for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

Nationwide Building Society should now refund Mr and Mrs K's total losses in full – taking into account any returns already received.

Nationwide Building Society should also pay Mr and Mrs K 8% simple interest per year on each payment from the date their claim was declined to the date of settlement.

*If Nationwide Building Society considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs K 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

My final decision is that I uphold this complaint about Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 11 December 2025.

Emly Hanley Hayes
Ombudsman