

The complaint

Mrs M complains that Nationwide Building Society ('Nationwide') won't refund the money she says was lost as the result of a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

In February 2020, Mrs M made a payment from her Nationwide account for £105,000 for an investment with a company I'll refer to as J.

Mrs M says she has been unable to withdraw her investment funds, and it was a scam. J was dissolved in July 2023.

Mrs M raised a scam claim with Nationwide through a professional representative. But Nationwide say they weren't given enough information to investigate Mrs M's scam claim.

Mrs M wasn't happy with Nationwide's response, so she brought a complaint to our service.

An investigator looked into her complaint but didn't uphold it. The investigator wasn't satisfied that the evidence supported Mrs M being the victim of an APP scam.

Mrs M disagreed with the investigator's opinion and asked for an ombudsman to review her case. She raised the following points:

- The absence of a criminal conviction or a decision not to prosecute doesn't prevent our service from reaching the conclusion Mrs M was the victim of an APP scam.
- Genuine trading doesn't necessarily mean the investment wasn't fraudulent.
- The high return Mrs M was promised suggests the investment was misrepresented.
- The payment was unusual and represented a heightened risk of an APP scam.
- Mrs M was vulnerable due to her lack of investment experience.

Having reviewed the case, I reached the same outcome as the investigator, but I wanted to address additional points. So, I issued a provisional decision explaining why and giving both parties a chance to respond before a final decision was issued.

My provisional decision

In my provisional decision section "What I've provisionally decided – and why" I said:

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position at law is that 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. Here it's not in dispute that Mrs M authorised this payment, although she did so not realising that she would later suffer a financial loss.

Has Mrs M evidenced that she was the victim of an APP scam?

Nationwide are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent". This definition needs to be met for Mrs M's payment to be considered under the CRM Code.

In order to decide whether Mrs M was the victim of an APP scam, I need to decide whether the purpose Mrs M had for making the payment and J had for obtaining the payment were broadly aligned. And, if there is a significant difference in these purposes, whether it was as the result of dishonest deception.

The key information is:

- Mrs M was making the payment for the purposes of an investment with J.
- There is no evidence that J didn't use Mrs M's funds for the agreed purpose. The police evidence showed that J was conducting trades and expected to repay investors.
- The police weren't satisfied that there was a realistic prospect of conviction as the course of conduct by J's director doesn't provide sufficient evidence to support an allegation of fraud.
- The insolvency practitioner's report doesn't support fraudulent activity by J.
- J may've misled clients, but this, by itself, doesn't meet the definition of an APP scam. Especially as there isn't any evidence that Mrs M's funds weren't used for the intended purpose or that J obtained the funds with a different purpose in mind.
- It's possible that J failed due to poor business practices or mismanagement of the company, but that wouldn't mean that Mrs M is the victim of an APP scam.

Taking the above points into consideration as a whole, I'm not satisfied that Mrs M has shown that her purpose for making the payment and J's purpose in obtaining the funds wasn't aligned. On that basis, I'm not satisfied that Mrs M was the victim of an APP scam, and her payment isn't covered by the CRM Code.

Mrs M says that she was vulnerable due to being an inexperienced investor. However, as I'm not satisfied that the CRM Code applies to Mrs M's payment I can't apply its provisions in relation to vulnerability.

Would intervention by Nationwide have made a difference?

There are some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Nationwide also has 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 customer's accounts safe.

I'm not satisfied that intervention by Nationwide meant they could've reasonably refused to follow Mrs M's payment instruction, or that it would've prevented Mrs M's loss. I say this because all of the information available at the time Mrs M made her payment in February 2020 suggested J was operating legitimately.

J were a UK company incorporated in May 2017, so they had been trading for a significant period of time prior to Mrs M making her payment. Also, it's likely that Mrs M received professional documentation in relation to the investment.

It wasn't until December 2020, that J started to have difficulty in repaying investors. So, if Nationwide had asked open and probing questions about the investment, I'm not persuaded Mrs M would've shared any concerning information about J. It's worth noting there's no evidence of any concerning information being available online about J in February 2020.

J wasn't regulated by the FCA, but not being regulated doesn't necessarily mean that it was a scam. Also, I wouldn't expect Nationwide to provide investment advice to Mrs M as to the suitability of an investment in these particular circumstances. Nationwide only needs to look for any potential signs that Mrs M may be at risk of financial harm from fraud and, for the reasons given above, I'm not persuaded that Nationwide wouldn't identified an APP scam risk.

I'm really sorry that Mrs M has suffered such a large financial loss. But I'm not satisfied that I can fairly hold Nationwide liable or ask them to refund her.

My provisional decision was that I didn't intend to uphold the complaint.

Responses to my provisional decision

Mrs M responded to say she had nothing further to add.

Nationwide didn't respond.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.14, says, if a respondent (in this case Nationwide) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing my final decision.

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.

As no new evidence or arguments have been put forward by either party, I see no reason to reach a different answer than in my provisional decision.

In summary, I'm not satisfied that Mrs M has shown she suffered her loss as the result of an APP scam, as defined by the CRM Code. So, the CRM Code can't be applied to her payment. And I'm not satisfied that if Nationwide had intervened when the payment was made, that Mrs M's loss would've been prevented.

So, for the reasons given above, I'm not satisfied that I can fairly ask Nationwide to refund Mrs M.

My final decision

My final decision is that I don't uphold this complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 12 March 2026.

Lisa Lowe
Ombudsman