

The complaint

Mr K and Mrs M complain that Nationwide Building Society did not refund the £10,000 they lost to a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail. In summary, Mr K and Mrs M were approached by a family friend who presented an investment opportunity to them. As other family members had already invested, they did too. However, they did not receive any returns and the scammer, 'X', eventually stopped responding to communications.

Mr K and Mrs M reported this to Nationwide, who felt this was a civil matter. They then referred it to our service and our Investigator felt this was more likely a scam as set out in the Lending Standards Board's Contingent Reimbursement Model ("CRM") code. And they felt reimbursement was due in the circumstances, but also thought a reduction of 50% was reasonable as Mr K and Mrs M did not have a reasonable basis to believe the investment was genuine. As Mr K and Mrs M did not agree, the complaint was referred to me.

I issued a provisional decision in which I recommended a full uphold. My decision read as follows:

The starting point under the relevant regulations and the terms of Mr K and Mrs M's account is that they are responsible for transactions they've carried out themselves. However, Nationwide are signatories to the CRM Code and, taking into account regulators' rules and guidance, codes of practice and what I consider to have been good industry practice at the time, should have been on the lookout for unusual and out of character transactions to protect its customers from (among other things) financial harm from fraud.

There was initially a question in this case as to whether or not this was fraud or a civil dispute between Mr K, Mrs M and X. Having reviewed all of the evidence available to me, I'm satisfied this was a scam. After reviewing X's bank statements, as well as the police correspondence, I'm satisfied X never intended to invest Mr K and Mrs M's funds as he promised and I think he deceived them into parting with their funds, with no intention of returning them.

In this case, all parties have agreed that Nationwide did not meet their obligations under the code, as they did not provide an effective warning when they identified a potential scam risk on the payment journey. As all parties are in agreement, I see no reason to explore this in more detail. In summary, I also agree that Nationwide did not meet their obligations under the code and that a refund is therefore due to Mr K and Mrs M.

What's left to decide is whether Nationwide is able to rely on one of the exceptions under the code, that Mr K and Mrs M made the payment without a reasonable basis for believing that investment and/or X was legitimate.

This is a very complex issue with many factors to consider, and I've not taken this decision

lightly. I've taken on board Mr K and Mrs M's comments, and reviewed the evidence available to me.

On the one hand, the returns promised were quite generous and could have been seen as too good to be true. And the 'contract' provided to them did not have their names or contact details on it and was only signed by X. So closer inspection of this document could have been a warning that X was not as legitimate as he seemed.

On the other hand, a large number of Mr K and Mrs M's family and friends had already invested in X and had also seen some returns. They were connected to X mainly via his mother, who was a member of their community so they felt they could trust him. Mr K's brother, another victim of X, had begun to work for him so I can understand why the company felt legitimate. And X appeared to be successful, he took other family members out to lavish dinners at high end restaurants and drove a brand-new car.

On balance, I think the fact other family members appeared to be convinced by the scam and had seen returns already provided a strong basis for Mr K and Mrs M to believe the investment was genuine. And X's apparent success, as well as the link his mother had to the community are all additional factors that when considered together, I think mean Mr K and Mrs M did have a reasonable basis to believe X and the investment was genuine.

So I currently think Nationwide should refund the £10,000 in full, and apply 8% simple interest from the date of the declined claim to the date of settlement.

Mr K and Mrs M did not provide any additional comments or evidence for me to consider.

Nationwide responded and agreed with my provisional findings and said they were willing to pay the redress I recommended.

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 neither party has disagreed with my findings or provided me with any additional comments or evidence for me to consider, I see no reason to deviate from the findings set out in my provisional decision. With that in mind, I uphold Mr K and Mrs M's complaint in full and direct Nationwide to reimburse the £10,000 they lost in the scam, along with 8% simple interest. I understand £5,000 has already been paid to Mr K and Mrs M, along with the interest for that portion. So, Nationwide should now pay the remaining funds.

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

I uphold Mr K and Mrs M's complaint and direct Nationwide Building Society to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs M to accept or reject my decision before 19 June 2024.

Rebecca Norris
Ombudsman