

The complaint

Miss S complains that National Westminster Bank Plc (“NatWest”) did not refund the payment she lost to a scam.

What happened

Miss S was introduced to a relative of a close friend, who said he was a trader in stocks and shares who could offer her a friends and family rate if she invested with him. I’ll call him ‘X’ for the purposes of this decision. Miss S knew other people who had successfully received returns from X so made some initial investments with him. She received returns as well as her funds back when she requested so she decided to invest further in X.

Miss S made three payments totalling £10,000 to X in May 2022 from her NatWest account. She received an agreement from X and was told she would receive returns of 4% monthly. She received the initial 8 payments totalling £3,2000 but began to have issues contacting X, and he gave excuses as to why he could not make the monthly instalments. Miss X felt she had been the victim of a scam and that X was running a Ponzi scheme in which her funds were used to pay other existing investors.

Miss S raised a scam claim with NatWest who issued a final respond in October 2023. This explained that they felt this was a genuine investment that had not worked out, so they felt it was a civil dispute between Miss S and X, instead of a scam. The complaint was referred to our service for review.

Our Investigator looked into it and felt that as Miss S had successfully invested with X previously, for larger amounts than the transactions raised in this complaint, this did not meet the threshold of an authorised push payment (“APP”) scam. So, they did not think NatWest had made an error when they chose not to reimburse Miss S.

Miss S’s representative did not agree with the outcome. They felt the pattern of the investment matched that of a Ponzi scheme and that Miss S was aware of other victims who had lost their funds.

As an informal agreement could not be reached the complaint has been passed to me for a 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.

It isn’t in dispute that Miss S authorised the payments totalling £10,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she’s liable for the transactions. But she says that she has been the victim of an authorised push payment (APP) scam.

NatWest has signed up to the voluntary Contingent Reimbursement Model (“CRM”) Code,

which provides additional 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 (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

...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.*

I've therefore considered whether the payment Miss S made to X falls under the scope of an APP scam as set out above. Having done so, I don't agree that it does. I'll explain why in more detail.

I've considered the first point in the definition, whether Miss S was deceived into transferring funds to a different person to who she intended to. But I don't think this is relevant to her complaint. She was expecting to pay X, and the funds went into his account, so I'm satisfied the first point is not applicable to this complaint.

I've gone on to consider the second point, whether Miss S transferred the funds for what she thought was a legitimate purpose but turned out to be fraudulent. I've therefore considered what Miss S thought the payments were for, and whether that broadly aligned with X's intended purpose for the funds.

Miss S received terms and conditions from X, which set out that the payments were essentially a loan to X as an individual and not as a business entity. It said X had a private fund that had made total returns of £160,000 the previous year. This also explained Miss S would receive between 2.5% and 4% monthly interest and that either party could cancel the investment. So, it appears Miss S was expecting her funds to be invested by X and that she would receive a steady rate of returns.

I've gone on to consider if X's intended purpose for the funds matched Miss S's, and on balance I think it's more likely it did. Miss S had previously invested with X and received a return of her funds. These payments started around ten months before the transactions raised in this complaint and totalled almost £13,000. I therefore think it's more likely that if X intended to deceive Miss S and take her funds, he would have done it at an earlier point when Miss S had invested a larger amount of money.

I have also reviewed the receiving bank statements as part of this complaint. Due to data protection issues, I cannot discuss the details of what the statements show. But I am able to assure Miss S that having reviewed these, the account activity suggests X was actively investing funds in line with Miss S's understanding

Having considered everything available to me, I think X's intended purpose of the funds aligned with Miss S's understanding of what the funds would be used for. As a result, I do not think this meets the definition of an APP scam, so I think NatWest acted fairly when it did not go on to consider the transactions under the CRM Code.

My final decision

I do not uphold Miss S's complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 21 November 2024.

Rebecca Norris

Ombudsman