

## **The complaint**

Mr G complains that National Westminster Bank Plc (“NatWest”) hasn’t refunded him after he fell victim to an investment scam.

## **What happened**

Mr G was searching for investment opportunities and came across a business I’ll call “S”. S was offering fixed-rate bonds.

Mr G was persuaded to invest £10,000 on 18<sup>th</sup> June 2020 which he sent via an intermediary business that was FCA regulated. Mr G’s investment was to be passed from the intermediary to S.

Mr G began to receive monthly returns. He received 12 payments of £75 each but the returns soon stopped and S became uncontactable before ultimately going into liquidation. Mr G wasn’t able to recover any of his money and so he reported the matter to NatWest in July 2023.

NatWest declined to refund the money Mr G had lost saying that it thought that this was a civil dispute between him and S and as such wasn’t covered by the Contingent Reimbursement Model Code (“the CRM Code”).

It has since come to light that S (as well as another company – linked to S by its director) was shut down by the Insolvency Service for misleading investors and failing to co-operate with an investigation into the firms’ affairs. Furthermore, The Insolvency Service has advised that the Secretary of State has accepted an 8-year disqualification undertaking for the linked director.

Our investigator set out a detailed view explaining why they were satisfied Mr G had been the victim of an APP scam. And why they were satisfied this claim was covered by the CRM Code. They also said there was no reason to delay this decision under R31(c) of the Code, as NatWest had already reached its outcome on Mr G’s complaint prior to the complaint being referred to this service.

Overall, the investigator thought there was enough persuasive evidence that this was more likely a scam than not and they upheld the complaint in full. They said NatWest should refund Mr G’s loss in full minus the returns he’d received.

NatWest did not agree. It maintained that Mr G’s claim was not covered by the CRM Code and queried why R31(c) of the CRM Code shouldn’t be applied in this case. It also asked this service to set out why it felt it was unfair for NatWest to classify this as a civil dispute at the point Mr G’s complaint was considered under the Code.

Our investigator responded to NatWest’s questions but as the complaint couldn’t be resolved informally it 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.

Having done so, I've come to the same conclusions as the investigator. I'll set out my findings in full below.

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.

NatWest is a signatory of the Lending Standard Board's Contingent Reimbursement Model Code. It has therefore agreed to adhere to its principles. The CRM Code requires firms to reimburse victims of APP Scams in all but a limited set of circumstances.

The investigator set out their explanation for making the finding this was an APP scam (and therefore a claim caught by the CRM code) but for clarity I'll repeat the salient points here.

- The director of S (and the linked businesses) has been disqualified as a director on Companies House for eight years by the Secretary of State.
- The director had failed to provide liquidators with accounting records for his liquidated businesses and has said he will not be providing these.
- The FCA issued a warning about the linked businesses in March 2020 saying they were providing financial services without authorisation.
- Despite saying S had assets of £34m, it never filed any accounts and wasn't independently audited at any point. There was also a further company that took over S, which also never filed any accounts, and the director was the same person. This company contacted investors to say their money would be safe despite the FCA regulated intermediary going into liquidation, and then it cut contact with all investors.
- Police Scotland are now investigating the director, S and other linked companies.
- In some instances, S' brochures claimed to have agreements in place with Edinburgh City Council to lease local authority properties – ECC have now confirmed to our service that it had no record of any such contract or agreement with S or the director.
- There is no evidence to suggest S or the linked companies were operating legitimately. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The Insolvency Service has also made comments following its investigation into S and the linked companies confirming investors were routinely deceived.
- Ultimately there's no evidence which demonstrates that victim's funds were used in the way they were told they would be.

In the absence of any convincing evidence that S was carrying out investments for its investors, I'm persuaded that the payment under discussion here meets the definition of an APP scam, as per the CRM Code.

NatWest hasn't provided any persuasive evidence that S was operating legitimately. And whilst there is an on-going Police investigation, Nationwide cannot apply the R3(1)(c) provision to delay giving an outcome under the Code where an outcome has already been given - which it was in the case on 14 August 2023.

Furthermore, NatWest hasn't provided an explanation why awaiting the Police investigation would reasonably inform an outcome under the CRM Code. A Police investigation and

decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if NatWest, under the voluntary CRM Code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in this particular instance. There is enough evidence here that on balance Mr G was more likely than not the victim of an APP scam, than not.

#### *Application of the CRM code to the facts of this case*

Because I'm satisfied this is an APP scam and caught by the CRM code, I've gone on to apply the provisions of the Code below.

As I've said, the Code requires firms to reimburse customers who have been the victims of APP scams, in all but a limited number of circumstances. It is for NatWest to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

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

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- 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.

Further exceptions are outlined in the CRM Code but do not apply to this case.

#### *Did NatWest meet the standards expected of a firm under the CRM Code?*

The CRM code says that, where a firm identifies APP scam risks, it should provide "Effective Warnings" to their customers. It sets out that an Effective Warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an Effective Warning should be understandable, clear, impactful, timely and specific.

In this case, NatWest has said Mr G would've been provided with a scam warning at the time. However, it hasn't provided us with a copy of this warning. And so, it hasn't been able to demonstrate that it has met the firms' standards as per the CRM code.

#### *Did Mr G have a reasonable basis of belief?*

NatWest has not provided any arguments that Mr G lacked a reasonable basis of belief when making this payment. And I agree with the investigators' findings that he did. I have set out those reasons below:

- The funds were being sent to an FCA-regulated company – "N" - which was receiving funds on behalf of S.
- Mr G was presented with professional looking literature regarding the investment, this was detailed in content and appeared genuine which is what you would expect from a legitimate investment company.
- I have not found any clear or compelling evidence from the time that would have revealed to Mr G that the investment opportunity was in fact a scam.

- While the rate of return was high, it wasn't so high that it was obviously too good to be true.

Following this finding I'm not satisfied that NatWest can rely on any exception to reimbursement under the CRM code, and I uphold this complaint in full.

I'm not persuaded NatWest acted unreasonably in not upholding Ms G's claim when it was first reported in August 2023. I am aware that more information about S has come to light since NatWest reached its initial conclusions. So, I won't be recommending NatWest pay Mr G compensatory interest.

### **Putting things right**

Overall, and for the reasons set out above, I'm satisfied that NatWest should've reimbursed Mr G under the provisions of the CRM Code. And, in those circumstances, I direct NatWest to compensate Mr G by:

- Refunding Mr G his total losses minus any returns received. Based on the statement evidence available to me, it appears Mr G's total returns amount to £900.

### **My final decision**

My final decision is that I uphold this complaint about National Westminster Bank Plc.

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

Emly Hanley Hayes  
**Ombudsman**