

## **The complaint**

Mr and Mrs O complain that National Westminster Bank Plc ('NatWest') won't refund the money they lost when they say they fell victim to a scam.

## **What happened**

Mr and Mrs O say they invested in a company I'll refer to as H. H was a private rental development company which offered loan notes to investors to raise money for its projects.

Mr and Mrs O's representative say they made three payments to H between 25 June 2018 and 30 November 2019 (of £10,000, £15,000 and £15,000). The payments were from a joint account held with NatWest. Mr and Mrs O say they haven't received any returns and their funds haven't been returned.

Mr and Mrs O brought a complaint to NatWest through their professional representative in December 2023. They said H is now widely accepted to be a scam and that H never had any intention of fulfilling its contract with them. With interest costs of approximately 50% (taking into account commission to introducers and 12% profit to investors), Mr and Mrs O said H needed to double its capital just to repay the principal to its capital providers. Mr and Mrs O also said H was insolvent from 2018, one of its directors had previously been declared bankrupt, H was many months late in filing accounts at the time their payments were made, and the police are investigating H.

Through their representative, Mr and Mrs O say that when they made unusual and out of character payments NatWest should have intervened and requested copies of correspondence they received from H, and considered the delay in H filing accounts. NatWest should also reimburse them under the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code').

## *What NatWest says*

NatWest say Mr and Mrs O's loss stemmed from their decision to invest in a high risk investment and that it is not responsible under the CRM Code or otherwise. In respect of whether the payments should have flagged, NatWest said its systems are set up to monitor the latest fraud trends and no concerns were held about the validity of the payments at the time.

Mr and Mrs O were unhappy with NatWest's response and brought a complaint to this service.

## *Our investigation so far*

The investigator who considered this complaint was only able to locate one payment to H in September 2018 and asked Mr and Mrs O to provide evidence of other payments. No further details were given, so the investigator discussed what she thought the outcome for any transactions made after the inception of the CRM Code would be.

She said there was insufficient evidence to conclude that H didn't intend to provide the agreed investment or make the returns it set out. This meant that she couldn't ask NatWest to consider Mr and Mrs O's complaint under the CRM Code, even if payments were made after it came into force.

Mr and Mrs O didn't agree with the investigator's findings, so their complaint has been passed to me to decide.

### **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.

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 evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

I have reviewed Mr and Mrs O's joint account statements and found the following transactions to H:

| <b>Transaction</b> | <b>Date</b> | <b>Amount</b>  |
|--------------------|-------------|----------------|
| 1                  | 31/05/18    | £10,000        |
| 2                  | 13/09/18    | £10,000        |
| 3                  | 23/10/19    | £3,200         |
| <b>Total</b>       |             | <b>£23,200</b> |

#### *Transactions 1 and 2*

These payments were made prior to the introduction of the CRM Code on 28 May 2019. The CRM Code can't be applied retrospectively, so it doesn't apply to these transactions.

NatWest should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) though. And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

I have reviewed Mr and Mrs O's account activity in the 12 month period before these payments were made. Having done so, I can see other transactions of greater value so I don't think these transactions would have stood out. In November 2017 Mr and Mrs O made two payments of £14,000 on consecutive days, and in April 2018 they made a £15,000 transaction. There were also high value transactions from Mr and Mrs O's joint account between payments one and two. For example, a £10,000 payment in August 2018, and what appears to be a cheque for just over this amount in early September 2018.

NatWest says it did speak to Mr and Mrs O at the time payment one was made though. Given the passage of time, it no longer has a recording of the call or full details of what was discussed, but NatWest's records show that Mr or Mrs O confirmed it was a genuine payment. I can't expect a bank to retain a call recording from May 2018 and, overall, I can't

fairly conclude NatWest should have done more here. In any event, I'm not persuaded NatWest should have reviewed H's account filing history or analysed its promotional literature as Mr and Mrs O have suggested.

### *Transaction 3*

NatWest is a signatory to the CRM Code. Under this 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 it, is met.

I have considered whether Mr and Mrs O's claim falls within the scope of the CRM Code, which 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.*

It is for Mr and Mrs O to demonstrate that they are victims of an APP scam.

To decide whether Mr and Mrs O are 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 O thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs O understood to have been the purpose of the payment.
- 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.

Mr and Mrs O thought they were investing in a property development company. I haven't seen anything to suggest that they didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.
- Mr and Mrs O have raised certain points and drawn adverse inferences. But the points they have raised, like the late filing of accounts, and high rates of return indicate poor business and financial management, but don't go far enough to bring their claim within the scope of the CRM Code. The same applies to the fact a director of H had previously been declared bankrupt.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by H and connected companies were done with any intention other than putting investors' funds towards development projects.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Mr and Mrs O's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took Mr and Mrs O's payment was different to theirs. So, I consider NatWest acted fairly in not considering Mr and Mrs O's complaint under the CRM Code. And I'm not persuaded that NatWest should have intervened when this payment was made, given the value and the fact H was an established payee by this stage.

If material new evidence comes to light at a later date, Mr and Mrs O can ask NatWest to reconsider their fraud claim in respect of the October 2019 transaction.

Overall, whilst I'm very sorry to hear of Mr and Mrs O's loss, I can't reasonably ask NatWest to reimburse them.

### **My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 2 December 2024.

Jay Hadfield  
**Ombudsman**