DRN-4792084

The complaint

Mr D complains that National Westminster Bank Plc ("NatWest") did not refund the £28,000 he lost to a scam.

What happened

Mr D found an investment opportunity online for a company I'll call 'X'. The business model centred around car leasing; investors like Mr D would make an investment in X, which would be used to purchase vehicles that could be rented out to individuals. Investors like Mr D would get security over a vehicle and would receive a monthly return on its leasing for a set amount of time before receiving an exit fee consisting of the remainder of the capital and the interest detailed in their agreement. Mr D made a number of deposits, but has only raised a complaint about the final two payments he made:

- 8 August 2019: £14,000
- 27 August 2020: £14,000

Mr D received some monthly returns into two separate accounts with NatWest and believes these totalled almost £7,000. However, after January 2021 these returns stopped and a supervisory notice from the Financial Conduct Authority ("FCA") was issued about X in February 2021. Mr D felt he had been the victim of a scam and raised a scam claim with NatWest in June 2023. However, NatWest felt it was more likely this was a high-risk investment gone wrong so deemed it to be a civil dispute and not a scam.

Mr D referred the complaint to our service and our Investigator looked into it. They felt that, on balance, it was more likely this was a scam and not a civil dispute as NatWest had said. In summary, they explained that the Serious Fraud Office ("SFO") had charged the directors of X, so they saw no reason why a review of the transactions under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code should be delayed. And as the report issued by the FCA found X's actual assets differed significantly to what investors had been told, they felt Mr D's transactions met the CRM code's definition of a scam.

Having reviewed the transactions under the code, the Investigator felt Mr D had a reasonable basis to believe he was involved in a genuine investment which he had received significant returns for previously. So, they recommended a full refund of Mr D's losses, less any returns he received from 8 August 2019 onwards. As well as 8% simple interest on the transactions from 15 days after the date the directors of X were charge by the SFO to the date of settlement.

NatWest responded and said they needed more time to make the correct decision as they had not yet heard from UK Finance in relation to X. Mr D's representative responded and said that while they agreed with the general outcome, they felt an application of the 8% simple interest should be applied from February 2021 when the FCA issued their report about X, as this is when NatWest should have known this was a scam.

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 Mr D authorised the payments of £14,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transactions. But he says that he has been the victim of an authorised push payment (APP) scam.

NatWest has signed up to the voluntary 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.

Can NatWest delay making a decision under the CRM code?

In NatWest's final response letter to Mr D's complaint, they said the payments were not covered under the CRM Code as they felt it was a failed investment and not a scam.

When asked for their comments following confirmation from the SFO that the two company directors of X were being charged, NatWest sought to apply R3(1)(c) under the code.

The CRM Code states:

> *R3(1) Firms should make the decision as to whether or not to reimburse a Customer without undue delay, and in any event no later than 15 Business days after the day on which the Customer reported the APP scam.*
>
> *(a) In exceptional cases, that period can be extended provided the Firm informs the Customer of the delay and the reasons for it, and the date by which the decision will be made.*
>
> *(b) The date in (a) should not be more than 35 Business days after the day on which the Customer reported becoming the victim of an APP scam.*
>
> *(c) If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.*
>
> *(d) If the Firm relies on (c), it should make a decision no later than 15 business days after the outcome of an investigation is known. After invoking (c), the Firm should not further invoke (a).*

As the SFO has confirmed in January 2024 that their investigation is complete and charges have been filed, NatWest should reasonably have given an answer based on the evidence available as per the section of the code set out above.

I also note that the Lending Standards Board has confirmed the code does not require a criminal test to be met in order for a reimbursement decision to be reached. With this in mind, as the directors of X have been charged by the SFO, I am not persuaded that NatWest can fairly delay giving an outcome under the CRM Code.

NatWest have also said they are waiting to hear from UK Finance in relation to X. However, our consideration of a complaint is not contingent on whether a trade association agrees with

the progression of cases and I see no reason to treat this case any differently to other cases involving claims brought under the CRM.

Has Mr D been the victim of a scam, as per the CRM Code?

I have set out the definition of an APP scam as set out in the CRM Code 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 Mr D made to X falls under the scope of an APP scam as set out above. Having done so, I think that it does. I'll explain why in more detail.

In order to determine if Mr D has been the victim of a scam, I have to consider if his intended purpose for the payments was legitimate, whether the intended purposes he and the company he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Based on the evidence available to me, it appears Mr D expected the funds to be used to purchase vehicles which would then be leased by a subsidiary of X. He would then receive regular returns on this investment. As X's subsidiary was an FCA regulated company, and the documents Mr D received appeared to be professional, I see no reason why Mr D would not have thought it was a legitimate investment.

I've gone on to consider whether X's intended purpose for the payments aligned with what Mr D intended as set out above. There are two reports that have helped to form my understanding of X's intended purpose for the payments, one by the FCA and another by the administrators of X and their subsidiaries.

The FCA's report states that the number of customers X claimed had entered into leases was 1,200, however they only had 69 registered vehicles on Companies House across its three subsidiaries. When the FCA did a deep dive into the registered vehicles, they found significant discrepancies between the X's business model and the vehicle inventory. These included a high number of what appeared to be second-hand vehicles. While X's business model did allow for some used cars to be leased, it relied on a large extent to securing deep discounts on new vehicles which would not be available on second hand cars. A number of leases were also said to have been entered into at a date which was significantly before the vehicle was put onto the road.

The FCA also found X's valuation of its motor vehicles as unrealistic, and felt the discrepancy was around £18 million. The report from the administrators of the subsidiaries also stated that there was less than one car for every six loan agreements that were known about at the time of liquidation. With the above in mind, I am satisfied that X was not carrying out investments as per the agreements with investors such as Mr D. I've seen no evidence to suggest Mr D had security over a specific vehicle and as it has been found X only had 69 charges registered on Companies House, I think it's unlikely he had security over one.

The SFO has confirmed that the directors of X were accused of falsifying information to encourage people to pay in whilst knowing that the investments were not actually backed up

by the cars they had promised. Having considered all of the information available from the FCA, the SFO and the administrators, I am satisfied that investors were dishonestly deceived into making their payments. And it follows that Mr D's payments meet the CRM Code's definition of an APP scam as set out above.

Did Mr D meet his obligations under the code?

As explained previously, the starting point in law is that Mr D is responsible for any payments he's authorised himself. But the CRM Code requires a firm to reimburse victims of APP scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply. One such exception is if Mr D made the payments without a reasonable basis to believe they were for a genuine investment or that X was not legitimate.

From what I've seen, the documents Mr D received from X prior to investing all appeared reasonably professional and looked to be legitimate. He had already made investments with X prior to the two raised within this complaint, and had received a significant amount of returns on those investments. His understanding of the investment itself and how it would work did not sound unreasonable and there was nothing to suggest at the time that X itself was not legitimate and I note one of its connected companies was authorised and regulated by the FCA.

With this in mind I don't think there was anything about the investment at that time that should have given Mr D cause for concern. So, I don't think it has been established that he made the payments without a reasonable basis to believe the investment and/or X was legitimate.

Any other considerations

I don't think NatWest could've taken any other action in order to prevent Mr D's loss, either at the time the payments were made or when the scam was reported to them. I say this as I don't think they'd have been able to identify that this was a scam at the point of the payment, given the sophistication of the scam.

Further to this, NatWest wouldn't have been able to have recovered Mr D's losses from the beneficiary bank at the time the scam was reported to them, given that the company had entered liquidation and no funds could've been returned by the beneficiary.

Redress

As Mr D received a number of monthly interest payments back from the car lease company across his two accounts with NatWest, I think it would be fair for these payments to be deducted from the amount they have to refund him.

The CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. I therefore think NatWest should have responded to Mr D's claim and refunded his losses under the CRM code within 15 days of the SFO publishing the outcome of its investigation. And so, I think NatWest should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

Mr D's representative has said they feel the 8% simple interest should be applied from February 2021, when the FCA issued its initial report. However, this report was issued prior to Mr D raising a complaint to NatWest, so I don't think it would be appropriate to backdate payments to a date before NatWest had an opportunity to review the evidence. The initial report from the FCA raised concerns about the business model, but I think the SFO's investigation led to charges being brought against the directors of X, so I therefore think 15

days after this report is a reasonable time for 8% interest to be applied.

As the car leasing company is now under the control of administrators, it's possible Mr D may recover some further funds in the future. So, if it wishes, I don't think it would be unreasonable for NatWest to request Mr D complete an indemnity confirming he'll return any funds recovered in future to NatWest. But this will be for them to arrange separately from the settlement of this complaint.

My final decision

For the reasons set out above, I uphold this complaint and require National Westminster Bank Plc to:

- Refund Mr D the payments he made as a result of this scam, less the payments he received back from the companies.

- Pay Mr D 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 August 2024.
Rebecca Norris
Ombudsman