

## **The complaint**

Mr K complains that National Westminster Bank Plc hasn't reimbursed funds he says he lost to a property investment scam.

## **What happened**

Mr K complains about payments he made from his account from July 2021 to November 2022 which he says were invested in a property scam. Mr K was investing with someone I'll call 'S'. He made payments to the investment via S's company as well as making payments to S directly. Mr K didn't receive the returns he expected from S and has also lost the majority of the funds he paid in.

Mr K complained to NatWest and said it ought to have protected him as a Premier customer. And he said it should now refund his losses under the Contingent Reimbursement Model Code ("CRM code") as he's been the victim of an Authorised Push Payment (APP) scam. NatWest said this was a civil matter between Mr K and S.

Mr K came to our service, but our Investigator didn't uphold his complaint. She said that he hadn't evidenced a loss from an APP scam, so he wasn't due a reimbursement. Mr K disagreed and provided some further paperwork, but she said it didn't evidence what was needed. The case was then 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.

Of particular relevance to the question of what is fair and reasonable in this case is the CRM code which NatWest has signed up to and I note Mr K feels he is due a reimbursement under this.

The CRM code doesn't apply to all APP payments which ultimately result in a loss for the customer. It only covers situations where the payment meets its definition of an APP scam. The relevant definition for this case would be that Mr K transferred funds to another person for what he believed were legitimate purposes, but which were in fact fraudulent.

Our investigator covered why she didn't consider Mr K had evidenced a loss from an APP scam. I'm in agreement with her this is the case. This is because I've considered the evidence available, but I can't fairly conclude that Mr K's been the victim of a scam in line with this required definition. This means the CRM code doesn't apply to his payments and so NatWest isn't required to reimburse him under it.

Mr K has explained that he wasn't close to S and this was a business relationship, not a civil one. But looking at the conversations provided and the bank statements, Mr K pays S's company for some of the payments but trusts S enough to pay him directly for others. They have conversations going back five years before this scam and have met up several times socially, including abroad with their families at the time Mr K was investing.

Also, prior to the payments complained about, Mr K invests in another scheme with S. The messages show S asking Mr K to collect a large sum of cash from a friend of S. S says Mr K should keep what is his and then send the rest to S. Mr K does do this, as he reports to S his bank asked him a lot of questions when he paid the money into his account. Collecting sums of cash is also discussed again at a later date, during the time Mr K now says he was being scammed. I'm not suggesting that someone known to a person can't scam them, but I do have to factor the details of the relationship between S and Mr K into my decision, especially when it seems possible funds were exchanged, and agreements made, outside of what's on the chat and statements we have.

Mr K has explained his purpose for making the payment was to invest with S and for the funds to be used towards property development schemes abroad. And that he was persuaded at the time through conversations with S that this was a legitimate venture, but he now realises that wasn't the case. However we don't have any contemporaneous paperwork that confirms the full details of the investment. I'm aware conversations happened over the phone, but therefore we do have limited information on what Mr K was actually investing in and what it was agreed S would do with the funds, to fully assess whether their purposes aligned.

Mr K also did receive returns from S at one stage, two quite substantial payments. Mr K says these were just funds S took from someone else and made to trick him into investing more. But I haven't seen evidence that this is actually what happened.

From the evidence we do have, I accept that S failed to deliver the returns Mr K, and those he introduced, expected to receive from the investments made. But I haven't seen any clear evidence this was always what S intended; or that at the time of taking the payments, S planned to use Mr K's funds in a different way to what was agreed. I would need to see persuasive evidence that S's intention was always to defraud Mr K when he took the funds, rather than this being a failed investment venture. And this hasn't been provided. So I can't safely say that Mr K has evidenced a loss from an APP scam, as per the required definition.

Looking at the evidence we hold, I can't agree NatWest was wrong to consider Mr K's situation a civil matter and so not reimburse her under the CRM code, or to not consider a refund more generally within the expectations on a firm to act to protect customers who may be at risk from financial harm. If these payments were made and accepted at the time for a legitimate reason, then any losses from them wouldn't meet the definition of a scam, so there's no financial harm to protect from.

Mr K has said how he would've expected NatWest to do more to protect him, but NatWest doesn't have a duty to protect a customer from poor or failed investments. And he's listed all the reasons he believed this was a legitimate venture to evidence his case. While it's not been shown to be the case, it then follows that even *if* I was to say this was a scam, it seems unlikely NatWest could've convinced Mr K not to go ahead at the time of the payments, considering all the persuasive information he held and his relationship with S at that time.

I accept it seems most likely Mr K is out of pocket for making these payments, but I don't consider he has evidenced a loss from an APP scam, so NatWest doesn't need to reimburse him.

### **My final decision**

For the reasons set out above, I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 January 2025.

Amy Osborne  
**Ombudsman**