

The complaint

Mr S complains that National Westminster Bank Plc ('NatWest') won't refund the money he says was lost as the result of a scam.

What happened

Mr S was introduced to an investment by an individual I'll refer to as C. Mr S believed that C was a financial advisor. The investment was being offered by a company I'll refer to as D.

D were offering bonds to raise funds for a property development. Mr S says he checked that D was a registered company on Companies House but carried out no other checks.

These are the payments that Mr S made from his NatWest account as part of the investment.

Date	Details of transaction	Amount
29.7.2021	Bank transfer to D – made in branch	£150,023
9.9.2021	Bank transfer to D – made through online banking	£20,000
10.9.2021	Bank transfer to D – made through online banking	£20,000
13.9.2021	Bank transfer to D – made through online banking	£20,000
14.9.2021	Bank transfer to D – made through online banking	£20,000
15.9.2021	Bank transfer to D – made through online banking	£20,000

In April 2022, D went into liquidation. Mr S believes that the investment was a scam.

Mr S raised a fraud claim with NatWest in August 2023. NatWest declined to refund Mr S and said Mr S has a civil dispute with D, as D was a legitimate company.

Mr S wasn't happy with NatWest's response, so he brought a complaint to our service.

An investigator looked into Mr S' complaint but didn't uphold it. The investigator wasn't satisfied that the circumstances under which Mr S made the payments met the definition of an APP scam as set out in the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). The investigator didn't think Mr S had been deceived into making the payments for a different purpose, than the investment he thought he was investing in.

Mr S disagreed with the investigator's opinion and raised the following points:

- Mr S was told the development was almost completed, but when D went into liquidation there was nothing on the building site.
- Mr S was misled into believing that the funds were fully secured – when they weren't.
- C told Mr S that a car manufacturer/motor racing team was heavily invested and that he had personally invested £300,000 – neither of which is true.
- There is an ongoing police investigation into C and evidence that C has been involved in other investments where people have lost their money.

- Had NatWest provided reasonable questioning when Mr S made the payments, he wouldn't have proceeded with them.

As the case couldn't be resolved informally, it was passed to me to review.

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.

I'm really sorry to hear of the impact the loss of these funds has had on Mr S. But, having carefully considered the evidence, I've reached the same answer as the investigator. I'll explain why.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Are Mr S' payments covered by the CRM Code?

NatWest are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

The CRM Code defines what is considered an APP scam as "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr S made his payments meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr S thought this purpose was legitimate.
- The purpose the recipient (D) had in mind at the time of the payments and whether this was broadly in line with what Mr S understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

In this case, Mr S was making the payments to purchase bonds in D in relation to a property development. I haven't seen anything that would suggest Mr S didn't think this was legitimate.

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

- D is a UK registered company, incorporated in 2018. The nature of its business is listed as "activities in real estate investment trusts". From what I've seen, D was operating legitimately for a significant period of time prior to Mr S making his payments. The first notice for strike off was in November 2021, but this was discontinued in December 2021 – which was after the date of Mr S' payments. While D has gone into liquidation, there is no evidence that supports they had a different purpose in mind when Mr S made his payments in July and September 2021.
- There appears to be an ongoing police investigation into certain companies, however D is not included on the list we've been given as part of that investigation. And, while there may be links between C and some of the companies on the list, there is no evidence to show what C's involvement was, whether there was any evidence of wrongdoing on C's behalf, or that C set out with an intention to deceive Mr S in relation to his investment with D. The concerns and potential links that Mr S has raised, are not supported by evidence from the police or any other statutory body.
- The liquidator's report that Mr S has provided doesn't show an intention to deceive by D when Mr S made his payments. Mr S says he was told the development was almost completed, but email updates he's shared say "the site has been fully prepped ready for construction to begin in earnest". I appreciate that the liquidator's update says there is limited value in on-site assets, but that doesn't mean that D didn't have the intention to complete the building. I'm not satisfied that the liquidator's report shows D's intention at the time Mr S made his payments, or that D took Mr S' funds with a different purpose in mind.
- It's possible that D failed due to mismanagement, financial failings, or due to impacts from the global pandemic. But a failed business, doesn't necessarily mean that the business set out with the intention to deceive or obtained funds through dishonest deception.

Taking all of these points into consideration as a whole, I'm not satisfied there is sufficient evidence to say it's more likely than not, that D had a different purpose in mind than Mr S did when he made his payments - or that D obtained the funds by dishonest deception. On that basis, I'm not satisfied that Mr S' payments meet the definition of an APP scam as per the CRM Code.

Mr S says he was told a car manufacturer/motor racing team was heavily invested in D, and that C had also personally invested £300,000. Unfortunately, there is no evidence as to who the individual investors/bond holders are or how much they invested, and it's unlikely that this information would be shared due to data protection laws. But even if Mr S was told this, and it wasn't true, it wouldn't change the outcome, as it doesn't show that D had a different purpose in mind when Mr S made the payments.

Mr S also raised a point about believing his investment was secured, which he says is not true. The documentation Mr S was given said a debenture charge was in place and registered on Companies House – and this is evidenced on Companies House. The charge was created in November 2019 in relation to D issuing up to £20m in secured bonds. I appreciate that D may not have sufficient assets to refund all the creditors, but that doesn't mean that the charge wasn't in place in line with the documentation.

It's possible that material new information may come to light at a later date, following the conclusion of the liquidator's investigation or the police investigation. If it does, Mr S can ask NatWest to reconsider his claim.

Is there any other reason I could hold NatWest liable for Mr S' loss?

NatWest intervened when Mr S made his initial payment of £150,000, which was done in branch – which is what I would've expected. As part of this intervention Mr S was asked questions about the reason for the payment, asked for any evidence he had in relation to the payment and asked what checks he had completed. It also appears that the staff member read out a scam script and disclaimer. I think NatWest's questions could've been more open and probing, but even if they had been I'm not satisfied that it would've prevented Mr S from making the payment or prevented his loss.

I say this because the documentation that Mr S had received from D was professional and looked legitimate. D was a UK incorporated company and appeared to have been operating legitimately for a number of years prior to Mr S making his payments. Also, there wasn't any evidence in the public domain that would've suggested Mr S should be concerned about D. Added to this, D was introduced to Mr S by someone he believed to be a financial advisor.

So, I think it's more likely than not any further questioning by NatWest wouldn't have highlighted any concerning information or meant NatWest shouldn't have processed Mr S' payment instructions.

For completeness, I'm not satisfied that NatWest should have intervened on any of the subsequent payments as they weren't so unusual or out of character that I would've expected NatWest to have identified a potential risk of financial harm. Mr S had previously made payments of between £10,000 and £20,000 from his account, also the subsequent payments were being made to an existing payee.

So, I'm not satisfied that I can fairly hold NatWest liable for Mr S' loss or ask them to refund him.

My final decision

My final decision is that I don't uphold this complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 March 2025.

Lisa Lowe
Ombudsman