

## **The complaint**

Mr and Mrs M complain that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY (NatWest) won't refund the money they say they lost to an Authorised Push Payment (APP) scam.

## **What happened**

In 2019, Mr and Mrs M were recommended an investment with "H", a property development company, by an agent they had used/paid previously. In December 2019, they sent a payment of £20,000 to H to invest.

H subsequently went into administration. In early 2024, Mr and Mrs M complained to NatWest (via a professional representative). They said H had scammed them and NatWest was liable for their loss due to its negligence – and under the terms of the Contingent Reimbursement Model code ("the CRM code").

NatWest wouldn't refund Mr and Mrs M. It said the matter was a high risk investment rather than a scam, and suggested Mr and Mrs M could make a claim to H's administrators.

Unhappy with this response, Mr and Mrs M referred the matter to our service. Our investigator didn't uphold their complaint. She wasn't persuaded H had scammed Mr and Mrs M, nor that NatWest should have prevented them from making the payment at the time.

Mr and Mrs M have appealed the investigator's findings. I've summarised the main arguments raised by their representative:

- Not all the funds raised were used for property development;
- By 2019 H was insolvent, and was taking money with no means or intent of providing the investment opportunities it advertised;
- H used a range of techniques to conceal what it was really doing – such as using subsidiaries to manipulate its accounts and move assets, to stop creditors claiming debt they were owed.

## **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 decided not to uphold it. I'll explain why.

To start, I want to reassure both sides that I've considered all their submissions in full when reaching my decision. The background and arguments set out above are simply a summary of what has been provided. Given the extensive submissions, I won't be responding to each allegation or point made; instead, I'll be focussing on the main points relevant to my determination.

It's agreed Mr and Mrs M authorised the payment in question. Under the Payment Services Regulations 2017, the starting position is that they are liable for the transaction.

However, there are additional considerations where the payment was made as a result of an APP scam – as Mr and Mrs M say was the case here. Taking into account the law, regulations, guidance, standards, codes, and industry practice, I consider there to be some circumstances where it may be fair and reasonable for an account provider to reimburse their consumer if they authorise a payment due to the actions of a fraudster.

Of particular relevance to the question of what is fair and reasonable in this case is the CRM code, which NatWest is a signatory of. This provides additional protection to victims of APP scams, as defined in the code (in section DS1(2)(a)):

*(a) APP Scam Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.*

Section DS2(2)(b) of the CRM code contains a specific exclusion for:

*private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier;*

So, what I've considered is whether NatWest acted fairly in deeming this matter a civil dispute rather than a scam. Looking at the definition of an APP scam, I first need to consider what Mr and Mrs M believed the purpose of the payment to be – and whether that was legitimate. I'm satisfied they thought they were paying to invest with a legitimate property development company.

Next, I need to consider what H's intended purpose was for the payments it received and whether that broadly matched Mr and Mrs M's purpose – to determine whether there was a dishonest deception by H in order to deprive them of these funds.

In making my judgment on this, I'm conscious H completed three separate developments. It was also working on other projects which it sold on to other developers when it ran into financial difficulty. These actions are indicative of a company operating legitimately.

While Mr and Mrs M's representative has suggested this work was used to give the appearance of legitimacy and lure in other investors, I'm not persuaded that's the more likely explanation. It would involve a lot of work and cost to complete three large scale building projects in order to then operate a scam.

There has also been mention of the high commission H paid to unregulated introducers. But I don't think the lack of regulation of the introducers, nor the use of commission, is enough to show H wasn't intending to use the money it received from Mr and Mrs M to fund building projects.

I'm aware H hasn't filed accounts for some time, and has subsequently gone into administration. But financial mismanagement isn't enough to show it was not intending to use the funds for development projects. To the contrary, projects were being worked on/completed during the period when H wasn't filing accounts.

Similarly, while I've considered the arguments raised about the movement of assets by H and its subsidiaries, I don't think there is persuasive evidence to show transactions carried out by the company, or connected companies, were done with any intention other than putting investors' funds towards development projects. Nor do I think the indications that H failed to cooperate with administrators demonstrates it is trying to conceal fraud. Investigations are still underway.

More broadly, I consider a lot of the points raised by the representative to be based on assumptions and extrapolations. While there are indications of poor business and financial management by H (and those connected to it), I don't think the evidence is enough to show H induced Mr C to make this payment through fraudulent deception. A lot of adverse inferences have been drawn here.

I appreciate some investigations are ongoing. But at this point in time, I haven't seen anything from H's liquidator, or any other external bodies, to show H was taking transactions for developments which it had no intention of completing. If new material evidence comes to light at a later date to show H was operating a scam, then Mr and Mrs M would be able to ask NatWest to reconsider this matter (and may ultimately be able to refer the issue back to us if they are unhappy with NatWest's response).

Having carefully considered all the available evidence and arguments, I'm not persuaded it's more likely H took Mr and Mrs M's payments for a purpose which differed from what they expected. I therefore think it was fair and reasonable for NatWest to decline to refund them under the terms of the CRM code.

I also agree with the investigator that NatWest didn't have cause to prevent/reject this payment either. The arguments raised by Mr and Mrs M's representative about why they think H was operating a scam weren't public knowledge at the time of the payment. I therefore don't think NatWest would have had reason to doubt that H was operating legitimately, and was undertaking/completing property developments.

I'm therefore not persuaded any alleged failure by NatWest to intervene on this payment caused or contributed to Mr and Mrs M's loss. In the circumstances, I don't consider it fair to direct NatWest to refund them.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 15 May 2025.

Rachel Loughlin  
**Ombudsman**