DRN-5015271

The complaint

Mrs and Mr H complain that National Westminster Bank Plc ("NatWest") won't refund £14,000 they lost to a scam.

What happened

In August 2019, Mrs and Mr H invested in a company - Buy2Let/Raedex Consortium Ltd ("R") – which leased cars. They found out about the opportunity at an investment exhibition. R offered an *"asset backed investment"* opportunity, where investors' capital would be used to purchase vehicles, which would then be leased on to provide a monthly return.

On 27 August 2019, Mrs and Mr H transferred £14,000 from their NatWest account to R. Mrs and Mr H received monthly returns of £255.69 from another company associated with R between September 2019 and January 2021. These payments totalled £4,346.73. After January 2021 these returns stopped, and Mr and Mrs H discovered R went into liquidation in early 2021.

Mrs and Mr H felt they'd been victims of a scam and, with the support of a professional representative, raised a scam claim with NatWest in June 2023. NatWest felt it was more likely this was a high-risk investment gone wrong, rather than a scam, so it concluded Mrs and Mr H were not entitled to recover their losses under the Lending Standards Board ('LSB') Contingent Reimbursement Model ('the CRM Code').

Mrs and Mr H disagreed and referred their complaint to the Financial Ombudsman. Our Investigator upheld the complaint and recommended that NatWest refund Mrs and Mr H's loss plus interest. The Investigator explained that the evidence – particularly the findings from the Serious Fraud Office ("SFO") – indicated that Mrs and Mr H's funds were most likely not used for their intended purpose and were instead obtained by dishonest deception, so their claim was covered by the CRM Code. In the circumstances, our Investigator wasn't persuaded NatWest could rely on any exceptions to reimbursement under the CRM Code. He therefore recommended NatWest refund Mrs and Mr H's losses plus 8% simple interest, payable from 15 days after the SFO charged R's directors (19 January 2024) to the date of settlement.

Mrs and Mr H accepted our Investigator's recommendation. NatWest provided a substantial response, in which it set out:

- Concerns about the Financial Ombudsman's ability to reach a fair outcome given there was an impending criminal court case, where the alleged perpetrators would be given an opportunity to present their side of events and defend themselves.
- Questions over how the Financial Ombudsman could reasonably conclude the case is covered by the CRM Code, specifically DS1 (2)(ii), without a conclusion to the court case.
- The evidence it considered demonstrated R had offered a high-risk investment that had failed, rather than a scam. It noted, the directors of R had not entered guilty pleas or admitted any wrongdoing; R appeared to have operated successfully for a significant period of time; and a Financial Conduct Authority ('FCA') regulated entity

was affiliated with R and the investment. It also noted the fact the Financial Services Compensation Scheme ('FSCS') had acknowledged that consumers may be entitled to a refund, more likely indicated it was a failed investment, especially as R retained significant assets directly related to their "*as described*" business model.

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.

Having carefully considered the available evidence and arguments from both sides, I'm upholding this complaint for largely the same reasons as our Investigator.

When considering what is fair and reasonable, I'm 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.

It's important to highlight that with cases like this, I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words, what I think is more likely than not to have happened in the circumstances.

It isn't in dispute that Mrs and Mr H authorised the payment of £14,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that they're liable for the transaction. But they say they have been the victims of an authorised push payment (APP) scam.

Is the CRM Code applicable in these circumstances?

NatWest is a signatory 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 DS1(2) (a), is met:

> *"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."*

If I conclude that the payment here meets the required definition of a scam then Mrs and Mr H would be entitled to a reimbursement, unless NatWest has shown that any of the exceptions as set out in R2(1) of the Code apply.

Is it appropriate to determine Mrs and Mr H's complaint now?

The CRM Code says firms should decide whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a

reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. By suggesting it is too soon for us to reach a conclusion on this case, it's possible NatWest considers that R3(1)(c) applies in this case.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision - for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *"a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code".*
- The Financial Ombudsman does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP rules, for our service to decide the merits of the complaint about the payment(s) they made fairly and reasonably on the balance of probabilities.

So, this provision only applies before the firm has made its decision under the CRM Code, meaning NatWest can't seek to delay a decision it's already made. It had already reached a decision on Mrs and Mr H's claim in its final response and reiterated this in its submissions to the Financial Ombudsman. So, I don't think NatWest can now rely on this provision or that this prevents us from considering this complaint now.

The SFO carried out an investigation into R and several connected companies. That investigation concluded on 19 January 2024 when the SFO published the outcome - which included the charging of R's former company directors with fraud - on its website. The court case is currently scheduled for 2026.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues based on evidence that is already available. And I'm conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

The LSB has said that the CRM Code doesn't require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, in order to determine Mrs and Mr H's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it's more likely than not they were victims of a scam rather than this being a failed investment.

I'm required to determine complaints quickly and with minimum formality. In view of this, I don't think it would be appropriate to wait to decide Mrs and Mr H's complaint unless there's a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available.

It's not clear if NatWest is concerned that any subsequent court action regarding R's actions may lead to Mrs and Mr H being compensated twice for the same loss, i.e. by NatWest and

by the courts. But I don't know how likely it is that any funds will be recovered as part of those proceedings.

Similarly, I'm aware that there is an ongoing administration process – including liquidation. This might result in some recoveries; but given this would initially be for secured creditors, I think it's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive. That said, in order to avoid the risk of double recovery, NatWest is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

I'm also aware that the FSCS is accepting customer claims submitted to it against R. More information about the FSCS's position on claims submitted to FSCS against R can be found here: https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/

The FSCS is also aware that we have issued recent decisions upholding complaints against payment service providers related to R's investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for the FSCS to determine, and under its rules. It might be that R has conducted activities that have contributed to the same loss Mrs and Mr H are now complaining to us about in connection with the activities of NatWest.

As I've determined that this complaint should be upheld, Mrs and Mr H should know that as they will be recovering compensation from NatWest, they can't claim again for the same loss by making a claim at the FSCS (however, if their overall loss is greater than the amount they recover from NatWest, they may be able to recover that further compensation by making a claim to the FSCS, but that will be a matter for the FSCS to consider and under its rules).

Further, if Mrs and Mr H have already made a claim at the FSCS in connection with this matter, and in the event the FSCS pays compensation, they are required to repay any further compensation they receive from their complaint against NatWest, up to the amount received in compensation from FSCS.

The Financial Ombudsman and the FSCS operate independently, however in these circumstances, it's important that FSCS and the Financial Ombudsman are working together and sharing information to ensure that fair compensation is awarded. More information about how the Financial Ombudsman shares information with other public bodies can be found in our privacy notice here: https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice

While the FSCS may be taking on these cases against R as a failed unregulated investment, it doesn't automatically follow that this was not a scam. This is not something that the FSCS would make a finding on before considering those claims.

As NatWest can ask Mrs and Mr H to undertake to transfer to it any rights they may have to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing them in line with the CRM Code's provisions.

In summary, as the SFO has reached an outcome on its investigation, I don't think it's fair or necessary to await the outcome of the related court case (which isn't scheduled until 18 months' time). Nor do I consider it's necessary to wait for the administration process to complete or wait for a claim with FSCS to be made. I therefore don't think it's fair for NatWest, or the Financial Ombudsman, to delay making a decision on whether to reimburse Mrs and Mr H any further.

Were Mrs and Mr H victims of a scam, as defined in the CRM Code?

To reach a conclusion on whether Mrs and Mr H were more likely than not victims of a scam, as defined by the CRM Code (DS1(2) (a)), I need to consider the purpose of their payment, and whether they thought this purpose was legitimate. I also need to consider whether this was broadly in line with R's purpose. If I decide there was a significant difference in these purposes, I must then consider whether this was due to dishonest deception on the part of R.

Based on the evidence presented, I'm satisfied Mrs and Mr H made a payment to R as part of an investment. They thought their funds would be used to purchase a car which would then be leased out, and that income from the lease would then be paid to them as a return on their investment, with a balance to be paid on the end of the term. I haven't seen anything to suggest they didn't think the investment with R was legitimate.

But the evidence I've seen suggests R didn't intend to act in line with the purpose it had agreed with Mrs and Mr H – specifically that it was an *"asset backed investment".* In reaching this conclusion, I've considered the wider circumstances surrounding R, and the linked companies involved in the investment. I've also considered the following key information:

- Following their investigation, the SFO said the defendants had provided false information to investors, *"encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised".*
- R told the FCA that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mrs and Mr H's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mrs and Mr H's funds weren't used for the intended purpose and that R obtained the funds through dishonest deception. So, I'm satisfied the circumstances here meet the definition of an APP scam and Mrs and Mr H's payments are therefore covered by the CRM Code.

Are Mrs and Mr H entitled to a refund under the CRM code?

Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mrs and Mr H. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the CRM Code outlines those exceptions.

NatWest hasn't provided any evidence or arguments to suggest that an exception to reimbursement applies, but for completeness I have considered if any exceptions would likely apply.

Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that*:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

** There are further exceptions outlined in the CRM Code, but they don't apply to this case*.

I'm satisfied that Mrs and Mr H had a reasonable basis for believing the investment was legitimate. I say this because R was an active company on Companies House and had positive reviews online, including from previous investors who had made repeat investments. Mrs and Mr H became aware of R when they were exhibiting at a legitimate investment exhibition. I haven't seen any evidence that suggests there were warning signs that R wasn't offering a genuine investment when Mrs and Mr H made their payment in August 2019. So, NatWest couldn't rely on Mrs and Mr H not having a reasonable basis for belief as an exception to reimbursement.

NatWest say they don't have any records as to whether Mrs and Mr H saw any warnings when they made the payment, or whether there was any intervention. On that basis, I'm not satisfied that NatWest provided them with an effective warning, or that an effective warning was ignored when Mrs and Mr H made the payment. So, I'm not satisfied NatWest can rely on this exception to reimbursement either.

It therefore follows that NatWest should refund the money Mrs and Mr H's lost in full.

Putting things right

As Mrs and Mr H received monthly interest payments from R until January 2021, I think it would be fair for these payments to be deducted from the amount NatWest has to refund to them. These amounted to £4,346.73. So, their actual loss is £9,653.27.

I don't think any intervention action I reasonably would've expected NatWest to take would've prevented Mrs and Mr H from making the disputed payments. This is because I don't think any of the information that I would've reasonably expected NatWest to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern. Also, I don't think it would've been unreasonable for NatWest to initially decline Mrs and Mr H's claim under the CRM Code, as when they first contacted it, it wasn't clear from the evidence available at that time that this was most likely a scam.

But the CRM Code allows firms 15 days to make a decision after the outcome of an investigation is known. So, considering this provision, I think NatWest should have responded to Mrs and Mr H's claim and reimbursed their losses under the CRM Code within 15 days of the SFO publishing the outcome of its investigation in January 2024. So, I think NatWest should now pay 8% simple interest per year on the refund from 15 days after the SFO published its outcome on 19 January 2024 until the date of settlement.

Therefore, in order to put things right for Mrs and Mr H, National Westminster Bank Plc must:

- Refund Mrs and Mr H the payment they made as a result of this scam on 27 August 2019 (£14,000), less the payments they received back from the company (£4,346.73) so, £9,653.27;

- Pay Mrs and Mr H 8% simple interest per year on that refund, from 15 days after 19 January 2024 until the date of settlement.

As R is now under the control of administrators, it's possible Mrs and Mr H may recover some further funds in the future. In order to avoid the risk of double recovery NatWest is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

If NatWest considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mrs and Mr H how much it has taken off. It should also provide a tax deduction certificate if Mrs or Mr H asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and I require National Westminster Bank Plc to put things right for Mrs and Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 7 April 2025.

Lisa De Noronha
Ombudsman