

The complaint

Mr L complains that National Westminster Bank Plc ('NatWest') won't refund money he says was lost after falling victim to a scam.

What happened

In May 2022, Mr L made payments to purchase a holiday lodge, which would be let out on his behalf. Mr L purchased the lodge from a company I'll refer to as R. As part of the purchase, Mr L was told the title of the lodge would be transferred to his name, he'd receive a quarterly return based on letting of the lodge, as well as receiving complimentary accommodation valued between £1,500 and £2,000 per annum.

These are the payments that Mr L made from his NatWest account. The first two payments were made to R as a deposit. The remaining payments were made to a solicitor's firm (S) who were acting on R's behalf.

Date	Details of transaction	Amount
25.5.2022	Payment to R	£1
25.5.2022	Payment to R	£999
13.6.2022	Payment to S	£20,000
14.6.2022	Payment to S	£20,000
14.6.2022	Payment to S	£20,000
16.6.2022	Payment to S	£20,000
17.6.2022	Payment to S	£19,000
	Total of the payments	£100,000

Mr L says he received 14 nights' accommodation between October 2022 and July 2023, and over £6,500 in returns.

Mr L says he stopped receiving returns and found out that R had gone into administration. Mr L says the administrators told him that he wasn't the only owner of the asset, and he believes R perpetrated a fraud.

Mr L raised a fraud claim with NatWest in October 2023. NatWest investigated Mr L's fraud claim but declined to refund him, saying he had a civil dispute with R.

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

An investigator looked into Mr L's complaint but didn't recommend that NatWest refund him. The investigator wasn't satisfied that Mr L's payments meet the definition of an APP scam under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code), and reached the opinion that Mr L had a dispute with R. The investigator explained that NatWest was unable to recover his funds from the beneficiary bank as he hadn't made the payments as the result of a scam.

Mr L disagreed with the investigator's opinion and asked for an ombudsman to review his case. So, 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the 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 at law is that a bank such as NatWest is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Is Mr L entitled to a refund under the CRM Code?

NatWest have signed up to 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.

But, the CRM Code does not apply to private civil disputes, for example 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.

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 L made his payments meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr L thought this purpose was legitimate.
- The purpose the recipient (R) had in mind at the time of the payments and whether this was broadly in line with what Mr L 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.

Mr L was making payments to R to purchase a holiday lodge and I haven't seen anything that suggests Mr L didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose R had in mind and whether it was in line with what Mr L thought.

In reaching an answer on what purpose R had in mind, the key information is:

- The evidence regarding the sale of the land/park homes (between the director of R

and another company) is dated December 2022/January 2023 which is after Mr L had made his payments. So, it doesn't point to intent to deceive at the point he made the payments.

- Mr L did receive the expected returns for a period of time after he made the payments, which suggests that something went wrong at a later date.
- The Registration of a Charge is dated November 2022, which is also after Mr L made his payments so doesn't point to intent at the point of the payments.
- R going into administration and being dissolved in 2024, and the director B being declared bankrupt in 2023, doesn't show intent at the point the payments were made.
- There is a police investigation into R and its director and an administrator has been appointed. The latest update from the police suggests the Insolvency Agency will not be taking on the investigation in its entirety and that the police's investigation is ongoing. So, they haven't provided any evidence that shows R took Mr L's funds with a different purpose in mind or through dishonest deception.
- Mr L has provided an email from the solicitor's firm (S) who he made payments to. They say they don't have anything on file which would suggest an intent to deceive.

Having carefully reviewed all of the evidence that Mr L has provided, I'm not satisfied that it shows R had a different purpose in mind when Mr L made his payment, or that R obtained the funds through dishonest deception. Something has clearly gone wrong, but it appears this happened after Mr L had made the payments.

I appreciate that Mr L has suffered a financial loss, but I'm not satisfied that the circumstances under which he made his payments meet the definition of an APP scam, as set out under the CRM Code. On that basis, I can't fairly hold NatWest liable for his loss under the CRM Code.

It's possible that material new evidence may come to light at a later date, for example from the administrators or the police. If that happens, Mr L can ask NatWest to reconsider his claim.

Could NatWest have prevented Mr L's loss?

There is an expectation for NatWest to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. Where potential fraud is identified, I would expect NatWest to intervene and attempt to prevent losses for the customer.

Here, NatWest didn't intervene on any of the payments Mr L made. Having reviewed Mr L's previous account activity, I'm not satisfied that NatWest should've been concerned or intervened when he made any of these payments. I say this as the payments weren't particularly unusual or out of character, as Mr L had previously made payments of between £10,000 and £20,000 several times in the months prior to the payments to R and S, including making large value payments on consecutive days.

As I'm not satisfied that NatWest should've been concerned or intervened, I can't fairly say they could've prevented Mr L's loss.

For completeness, even if I was to say NatWest should've intervened it wouldn't change the outcome in this case, based on the information Mr L would've shared in relation to any questions NatWest should've asked. Mr L had found the investment through an introducer, R

was a genuine company that had been trading for a couple of years before Mr L made his payments, a genuine solicitor's firm (S) were involved in the transaction with only the initial deposit paid directly to R, and Mr L received professional documentation and material in relation to the purchase.

So, even if NatWest had intervened I think it's unlikely that Mr L would've shared any information which would've concerned NatWest that he might be at risk from financial harm or that they shouldn't follow his payment instructions.

Recovery of funds

As NatWest deemed Mr L's fraud claim a civil dispute, they couldn't attempt recovery of Mr L's funds. Even if NatWest had raised a scam claim with the beneficiary bank, it's more likely than not that the beneficiary bank would've rejected it and deemed the matter a civil dispute between Mr L and R, meaning no funds would've been returned.

I'm really sorry that Mr L has lost such a significant sum of money, but for the reasons given above, I can't fairly hold NatWest liable for his 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 L to accept or reject my decision before 17 March 2025.

Lisa Lowe
Ombudsman