

The complaint

Miss R complains that National Westminster Bank Plc did not refund the transactions she lost to a scam.

What happened

Miss R found an investment opportunity in an e-mail advertisement for a company I'll call 'X'. The business model centred around car leasing; investors like Miss R would make an investment in X, which would be used to purchase vehicles that could be rented out to individuals. Investors would get security over a vehicle and would receive a monthly return on its leasing for a set amount of time before receiving an exit fee consisting of the remainder of the capital and the interest detailed in their agreement. Miss R made a number of deposits from her NatWest account:

Date	Amount	Transaction
25/03/2020	£20,000	Transfer
26/03/2020	£20,000	Transfer
27/03/2020	£2,000	Transfer
07/04/2020	£980	Credit
27/04/2020	£802.08	Credit
26/05/2020	£802.08	Credit
25/06/2020	£802.08	Credit
27/07/2020	£802.08	Credit
25/08/2020	£802.08	Credit
25/09/2020	£802.08	Credit
26/10/2020	£802.08	Credit
25/11/2020	£802.08	Credit
29/12/2020	£802.08	Credit
25/01/2021	£802.08	Credit
Total loss	£32,999.20	

Miss R received total returns of £9,000.80, making a total loss of £32,999.20. After this, she received no further returns on her investment and Miss R eventually felt she had been the victim of a scam. She raised a scam claim with NatWest in July 2023. NatWest issued a final response letter in July 2023 in which they explained they felt this was a high-risk investment that had failed, so they felt this was a civil dispute and did not meet the definition of a scam.

Miss R referred the complaint to our service and our Investigator looked into it. They felt that, on balance, it was more likely this was a scam and not a civil dispute as NatWest had said. In summary, they explained that the Serious Fraud Office ("SFO") had charged the directors of X, so they saw no reason why a review of the transactions under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code should be delayed. And as the report issued by the FCA found X's actual assets differed significantly to what investors had been told, they felt Miss R's transactions met the CRM code's definition of a scam.

Having reviewed the transactions under the code, the Investigator felt Miss R had a

reasonable basis to believe she was involved in a genuine investment as the paperwork she had received appeared to be professional. So, they recommended a full refund of Miss R's losses, less any returns she received. As well as 8% simple interest on the transactions from 15 days after the date the directors of X were charged by the SFO to the date of settlement.

Miss R accepted the findings set out in the view, however NatWest did not as they did not agree our approach was fair or reasonable.

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.

It isn't in dispute that Miss R authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she is liable for the transactions. But she says that she has been the victim of an authorised push payment (APP) scam.

NatWest has signed up 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 it, is met.

Has Miss R been the victim of a scam, as per the CRM Code?

I have set out the definition of an APP scam as set out in the CRM Code below:

...a transfer of funds executed across Faster Payments...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.

I've therefore considered whether the payments Miss R made to X fall under the scope of an APP scam as set out above. Having done so, I think that it does. I'll explain why in more detail.

In order to determine if Miss R has been the victim of a scam, I have to consider if her intended purpose for the payments was legitimate, whether her intended purposes and the company she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Based on the evidence available to me, it appears Miss R expected the funds to be used to purchase vehicles which would then be leased by a subsidiary of X. She would then receive regular returns on this investment. As X's subsidiary was an FCA regulated company, and the documents Miss R received appeared to be professional, I see no reason why she would not have thought it was a legitimate investment.

I've gone on to consider whether X's intended purpose for the payments aligned with what Miss R intended as set out above. There are two reports that have helped to form my

understanding of X's intended purpose for the payments, one by the FCA and another by the administrators of X and their subsidiaries.

The FCA's report states that the number of customers X claimed had entered into leases was 1,200, however they only had 69 registered vehicles on Companies House across its three subsidiaries. When the FCA did a deep dive into the registered vehicles, they found significant discrepancies between the X's business model and the vehicle inventory. These included a high number of what appeared to be second-hand vehicles. While X's business model did allow for some used cars to be leased, it relied on a large extent to securing deep discounts on new vehicles which would not be available on second hand cars. A number of leases were also said to have been entered into at a date which was significantly before the vehicle was put onto the road.

The FCA also found X's valuation of its motor vehicles as unrealistic, and felt the discrepancy was around £18 million. The report from the administrators of the subsidiaries also stated that there was less than one car for every six loan agreements that were known about at the time of liquidation. With the above in mind, I am satisfied that X was not carrying out investments as per the agreements with investors such as Miss R. I've seen no evidence to suggest Miss R had security over a specific vehicle. And I note the section of the agreement they signed with X that set out the details of the car were left blank.

The SFO has confirmed that the directors of X were accused of falsifying information to encourage people to pay in whilst knowing that the investments were not actually backed up by the cars they had promised. Having considered all of the information available from the FCA, the SFO and the administrators, I am satisfied that investors were dishonestly deceived into making their payments. And it follows that Miss R's payments meet the CRM Code's definition of an APP scam as set out above.

Do exceptions to reimbursement under the code apply in this case?

As explained previously, the starting point in law is that Miss R is responsible for any payments she has authorised herself. But the CRM Code requires a firm to reimburse victims of APP scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply. One such exception is if Miss R made the payments without a reasonable basis to believe they were for a genuine investment or that X was not legitimate.

From what I've seen, the documents Miss R received from X prior to investing all appeared reasonably professional and looked to be legitimate. Her understanding of the investment itself and how it would work did not sound unreasonable and there was nothing to suggest at the time that X itself was not legitimate and I note one of its connected companies was authorised and regulated by the FCA.

With this in mind I don't think there was anything about the investment at that time that should have given Miss R cause for concern. So, I don't think it has been established that she made the payments without a reasonable basis to believe the investment and/or X was legitimate.

Any other considerations?

I don't think NatWest could've taken any other action in order to prevent Miss R's loss, either at the time the payments were made or when the scam was reported to them. I say this as I don't think they'd have been able to identify that this was a scam at the point of the payment, given the sophistication of the scam.

Further to this, NatWest wouldn't have been able to have recovered Miss R's losses from the beneficiary bank at the time the scam was reported to them, given that the company had entered liquidation and no funds could've been returned by the beneficiary.

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex 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 banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Miss R is now complaining to us about in connection with the activities of NatWest.

As I have determined that this complaint should be upheld, Miss R should know that as she will be recovering compensation from NatWest, she cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount she recovers from NatWest she may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Miss R has already made a claim at FSCS in connection with X, and in the event the FSCS pays compensation, Miss R is required to repay any further compensation she receives from her complaint against NatWest, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS 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>)”

Redress.

As Miss R received a number of monthly interest payments back from X, I think it would be fair for these payments to be deducted from the amount NatWest reimburses her.

The CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. I therefore think NatWest should have responded to Miss R's claim and refunded her losses under the CRM code within 15 days of the SFO publishing the outcome of its investigation. And so, I think NatWest should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

In order to avoid the risk of double recovery the 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.

My final decision

For the reasons set out above, I uphold this complaint and require National Westminster Bank Plc to:

- Refund Miss R the payments she made as a result of this scam, less the payments she received back from X.

- Pay Miss R 8% simple interest on that refund, from 15 days after 19 January 2024 until the date of settlement.

If National Westminster Bank Plc considers that it's required by HM Revenue & Customs to deduct income tax from the interest I've awarded, it should tell Miss R how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 21 January 2025.

Rebecca Norris
Ombudsman