DRN-5113297

The complaint

Mr and Miss M complain that National Westminster Bank Plc ("NatWest") did not refund the transactions they lost to a scam.

What happened

Mr and Miss M found an investment opportunity after a friend recommended it. The business model centred around car leasing; investors like Mr and Miss M would make an investment in the company that I'll call '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. Mr and Miss M made two transfers of £14,000 from their NatWest account in August 2020, bringing the total paid to £28,000.

Mr and Miss M received returns of £5,347.20 over the first five months of the investment, but the returns then stopped. This left Mr and Miss M with a loss of £22,652.80. Eventually, they felt they had been scammed by X and raised a scam claim with NatWest via a representative.

NatWest issued a final response letter in which they highlighted that Mr and Miss M had previously invested in X and had received a lump sum prior to the transactions they were complaining about. And they felt this showed the investment was genuine. Overall, NatWest 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 under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code.

Mr and Miss M 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 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 the transactions met the CRM code's definition of a scam.

Having reviewed the transactions under the code, the Investigator felt Mr and Miss M had a reasonable basis to believe they were involved in a genuine investment as the paperwork they had received appeared to be professional. So, they recommended a full refund of Mr and Miss M's losses, less any returns they received. As well as 8% simple interest on the transactions from 15 days after the date the directors of X were charge by the SFO to the date of settlement.

Mr and Miss M 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 Mr and Miss M authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say that they have been the victims 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.

Have Mr and Miss M been the victims 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 Mr and Miss M made to X fall under the scope of an APP scam as set out above. Having done so, I think that they do. I'll explain why in more detail.

In order to determine if Mr and Miss M have been the victim of a scam, I have to consider if their intended purpose for the payments was legitimate, whether their intended purposes and the company they 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 Mr and Miss M expected the funds to be used to purchase vehicles which would then be leased by a subsidiary of X. They would then receive regular returns on this investment. As X's subsidiary was an FCA regulated company, and the documents Mr and Miss M received appeared to be professional, I see no reason why they 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 Mr and Miss M 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 Mr and Miss M. I've seen no evidence to suggest Mr and Miss M 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 Mr and Miss M'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 Mr and Miss M are responsible for any payments they have authorised themselves. 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 Mr and Miss M 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 Mr and Miss M received from X prior to investing all appeared reasonably professional and looked to be legitimate. Their 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 Mr and Miss M cause for concern. So, I don't think it has been established that they 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 Mr and Miss M'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 Mr and Miss M'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 Mr and Miss M are now complaining to us about in connection with the activities of NatWest.

As I have determined that this complaint should be upheld, Mr and Miss M should know that as they will be recovering compensation from NatWest, they cannot claim again for the same loss by making a claim at FSCS (however, if the 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 FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr and Miss M have already made a claim at FSCS in connection with X, and in the event the FSCS pays compensation, Mr and Miss M are required to repay any further compensation they receive 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)"

Putting things right

As Mr and Miss M 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 them. I have calculated the total overall loss to be £22,652.80.

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 Mr and Miss M's claim and refunded their 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 Mir and Miss M's complaint and require National Westminster Bank Plc to:

- Refund Mr and Miss M the payments they made as a result of this scam, less the payments they received back from X.
- Pay Mr and Miss M 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 Mr and Miss M how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss M to accept or reject my decision before 20 February 2025
Rebecca Norris

Ombudsman