DRN-5118669

The complaint

Mr W complains that National Westminster Bank Plc – trading as Ulster Bank ("Ulster Bank") won't refund the money he lost when he fell victim to an investment scam.

Mr W's complaint has been brought by a professional representative but I'll only refer to Mr W in this decision.

What happened

Mr W was actively looking for an investment opportunity online when he came across a company I will refer to as "B".

Mr W reached out to B for more information and he was contacted by a representative of B who went through a presentation with him and explained how the company worked. Mr W was told that for every £14,000 invested, a car would be bought on his behalf and leased out by a connected company – "Raedex" "(R)". Mr W would receive monthly returns and a final gross payment at the end of the term. The vehicle itself would act as security for the investment.

Mr W originally invested in 2019 but this investment, and its associated returns, do not form part of this complaint.

In February 2021, Mr W made a further investment of £28,000. Mr W didn't receive any returns on this investment.

In July 2023, Mr W complained to Ulster Bank through his representative. They said Ulster Bank failed to protect Mr W at the time he made the payments to B and he should be reimbursed under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).

Ulster Bank didn't agree to reimburse Mr W's loss. It said he had paid a legitimate company that had ultimately gone into administration. Because of this, Ulster Bank concluded Mr W's circumstances amounted to a civil dispute with B, rather than a scam.

Unhappy with Ulster Bank's response to his complaint, Mr W brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full.

They said that the CRM Code required Ulster Bank to provide an outcome within 15 days of the completion of the Serious Fraud Office Investigation on 19 January 2024 but had it not done so.

The investigator went on to explain why they felt Mr W's complaint was covered by the CRM Code - and recommended that Ulster Bank reimburse him in full. On top of this, the investigator said that Ulster Bank should add interest at the rate of 8% simple per year from 15 days after 19 January 2024 to the date of settlement. Finally, the investigator said it would be fair for Ulster Bank to ask Mr W to sign an indemnity confirming he would return any funds that may later be recovered in the administration process.

Mr W didn't respond to our investigators view.

Ulster Bank didn't agree with the investigator's view. In summary, it said:

- It wasn't possible for this service to say the CRM Code was applicable to Mr W's circumstances until the impending criminal court proceedings had ended.
- It would like a further explanation of what evidence this service had seen which would support this wasn't simply a failed investment.

The investigator felt she had already addressed Ulster Bank's additional comments. And as an agreement could not be reached, the case 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.

In deciding what's 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 time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

Is the CRM Code definition of an APP scam met?

Firstly, I have considered whether Mr W's claim falls within the scope of the CRM Code, which defines an APP scam as:

...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.

To decide whether Mr W is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr W thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mr W understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

From the evidence I have seen, I'm satisfied Mr W intended to invest in B. He understood that B would use the funds he paid to buy cars that would be leased, and he would receive returns on his investment. I haven't seen anything to suggest that Mr W didn't consider this to be a legitimate purpose.

I've then gone on to consider the purpose B had in mind at the time it took the payments.

After careful consideration, I'm not satisfied, on the balance of probabilities, that B intended to act in line with the purpose agreed with Mr W. I will explain why in more detail below.

In its first supervisory notice in respect of R in February 2021 the FCA noted that R said it had entered into approximately 1,200 car leases in the period between January 2018 to January 2021, but only 69 charges had been registered as agreed.

In the same notice, the FCA said it had conducted a sampling of R's leaseholder list against the DVLA database and identified various discrepancies between its business model and vehicle inventory. The FCA report referred to the fact that 55 cars appeared to be second hand (although its business model relied to a large extent on securing heavy discounts on new vehicles), to vehicles that couldn't be found, and to leases entered into at a date significantly before the vehicle was put on the road. The FCA also concluded that the group's liabilities significantly exceeded its assets, and its business model was fundamentally unsustainable.

I have also seen evidence from an SFO news release dated 19 January 2024 which confirms that two directors of B have been charged in relation to the car lease scheme. The news release noted that directors were accused of providing those who signed up with false information, encouraging people to pay in with false information whilst knowing that investments weren't backed up by the cars they had been promised.

The SFO also noted that the investment was backed by a tangible asset – a car. In Mr W's case the "Vehicle Funding Form" he was provided with when he made this payment didn't specify a particular vehicle but did refer to the number of units being funded. The evidence I have referred to above shows this aspect of the investment wasn't being performed.

A report by the administrators of one of the connected companies said that the total number of loan agreements relating to 834 investors was 3,609. But the number of vehicles held by the company at the time it went into administration was 596, equating to less than one car for every six loan agreements. If the proposed vehicles weren't being purchased and leased, it's unclear how the proposed returns could've been achieved legitimately.

Overall, I'm satisfied B didn't provide the investment it offered to Mr W and didn't follow its business model. The purpose B intended when it took Mr W's funds wasn't aligned with his. Given the information provided by the SFO in respect of what the directors of B are accused

of, I'm persuaded that the purposes each party had in mind for the payments weren't aligned as a result of dishonest deception. This means that I'm satisfied the CRM Code definition of an APP scam has been met.

Should Mr W be reimbursed under the CRM Code?

Ulster Bank is a signatory to the CRM Code which requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set out in it. Under the CRM Code, a bank 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 services; and/or
    - the person or business with whom they transacted was legitimate.

- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Ulster Bank to establish that an exception to reimbursement applies. Here, Ulster Bank hasn't considered Mr W's complaint under The Code and didn't respond to any points made by the investigator in respect of its application – other than to say it didn't think The Code was applicable at all. So, it hasn't demonstrated that any of the listed exceptions can fairly be applied.

For the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions can be fairly applied.

Mr W says he first heard about B in 2019 and he decided to invest when B appears to have been well established. At this point others had received returns on their investments and he ultimately did too. Mr W had attended a professional presentation with a funding consultant who was able to professionally set out how the company worked and he was provided with a Vehicle Funding Form that looked legitimate. The rate of return he had been offered didn't appear to be too good to be true. So, I don't think there was anything that ought reasonably to have caused Mr W concern at the time of making the payments.

Ulster Bank hasn't provided any warnings so hasn't demonstrated that Mr W ignored an effective warning.

I've also thought about whether there is any other reason why Ulster Bank should reimburse Mr W. But even if I conclude that Ulster Bank ought reasonably to have intervened and asked Mr W probing questions about the nature of the payments and provided scam advice, I don't consider the scam would have been uncovered and his loss prevented. I say this because I don't think there was enough information available at the time that would have led Ulster Bank to be concerned that Mr W was at risk of financial harm.

Putting things right

Overall, I'm satisfied Ulster Bank should refund Mr W his full outstanding loss amounting to £28,000.

Interest

I'm not persuaded Ulster Bank acted unreasonably in not upholding Mr W's claim when it was first reported in July 2023. However, at the conclusion of the SFO investigation, I consider Ulster Bank should have assessed all the available evidence and made a decision within 15 business days of 19 January 2024. So, Ulster Bank should pay interest at the rate of 8% simple from 15 business days after the SFO published its outcome on 19 January 2024.*

*If Ulster Bank considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Claims made to the FSCS

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 W is now complaining to us about in connection with the activities of Ulster Bank.

As I have determined that this complaint should be upheld Mr W should know that as they will be recovering compensation from Ulster Bank, 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 Ulster Bank 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 W has already made a claim at FSCS in connection with B and in the event the FSCS pays compensation, Mr W is required to repay any further compensation they receive from their complaint against Ulster Bank, 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~~)~~"

In order to avoid the risk of double recovery the Ulster Bank 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

I uphold this complaint against National Westminster Bank Plc – trading as Ulster Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 January 2025.

Emly Hanley Hayes
Ombudsman