

Complaint

Mr S is unhappy that National Westminster Bank Plc (NatWest) didn't reimburse him after he told it he'd fallen victim to a scam.

Background

In 2018, Mr S learned about an investment opportunity with a company called Buy2Let Cars/Raedex Consortium Ltd. Under the scheme, investors were to provide the funds for the acquisition of new vehicles. Those vehicles would then be leased to members of the public. The proceeds would benefit the investor. The company told investors that they'd receive monthly payments for 36 months. In month 37, the leased car would be returned the company.

Amongst the various assurances he was given by the company, he was told the investment was "*asset backed*" – in other words, his funds were associated with and secured against a specific vehicle. That meant his investment was more secure. Mr S decided to go ahead with the investment. He used his NatWest account to make several payments to the company. Between June 2019 and February 2020, the total value of those payments was around £294,000. He also made multiple investments prior to June 2019, but he's chosen not to complain about the bank's role in those payments.

Unfortunately, things didn't go according to plan. The company later failed and Mr S determined that he must've fallen victim to a scam. He complained to NatWest, but it didn't agree to refund his losses. It said that it considered that this was a legitimate investment that had failed, rather than a scam. It said Mr S should try to recover his money through the formal administration process. It also said that it had provided Mr S with warnings when he was making the payments, but that he went ahead and made them anyway.

Mr S wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. Santander disagreed with the Investigator's view. In addition to the arguments it had already raised when it responded to the complaint, it pointed out that there were ongoing legal proceedings regarding the company. It said that a specific provision in the CRM Code allowed it to delay responding in such circumstances.

Since NatWest disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

Findings

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 am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a firm 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. However, that isn't the end of the story. NatWest is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code"). That Code requires signatories to pay refunds to victims of authorised push payment ("APP") scams in all but a limited set of circumstances.

The CRM Code doesn't cover all payments. For these payments to fall within its scope, they must meet the relevant parts of the CRM Code's definition of an APP scam. NatWest has argued that it's an open question whether this was an APP scam. For that reason, it looks to rely on R3(1)(c) in the CRM Code. That provision says this permits it to defer giving an answer on a claim where the case is "*subject to investigation by a statutory body and the outcome might reasonably inform [its] decision ...*" However, I don't think it can do so. NatWest already made a decision regarding this claim when it responded to the initial complaint on 11 July 2023. It didn't say in its final response letter that it was deferring reaching a decision, so it can't rely on that provision in the rules now.

NatWest has also argued more generally that the evidence isn't strong enough to say that this was an APP scam, rather than a private civil dispute, and that it would be premature to conclude otherwise. It's important to note that there are a number of potential reasons (other than an APP scam) for a company to fail to meet its contractual obligations. That might happen, for example, where a business has a problem with cashflow. A business can fail or be mismanaged so that its promises can't be kept. That doesn't necessarily demonstrate an intention to commit fraud (which is what is needed to show that the CRM Code should apply). Instead, for a payment to be covered, it must meet the Code's definition of an APP Scam. In this context, that would require that the purpose for which the company procured the payments was different to what Mr S believed due to dishonest deception.

The key factor is what the intentions of the company were at the time of the payments. I obviously can't know what was in the mind of the individuals selling the investment to Mr S at the time. I have to infer what those intentions most likely were from what the other available evidence shows. I also need to be able to exclude, on the balance of probabilities, the alternative possibility that this was simply a matter of the company breaching its legitimate contract for a legitimate reason. Put another way, I need to decide whether the available evidence shows it is most likely that the company set out to defraud Mr S with criminal intent. That is a high bar to meet. Nonetheless, I'm satisfied that the evidence shows that this was a scam and I'll explain why.

I understand Buy2Let Cars claimed that investor funds would be allocated to specific cars. There would be a legal charge over the specific vehicle acquired. That doesn't appear to be what happened. The FCA's supervisory notice to one of the connected companies said that, while the companies had around 1,200 investors, they had charges secured against only 69 vehicles. In other words, the overwhelming majority of the cars acquired by Buy2Let Cars weren't secured in the way Mr S was told they would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database. It found that a large proportion of these vehicles were second hand. This was inconsistent with the way the company explained its operating model which relied on it securing significant discounts on new cars. It also found other inconsistencies. Some leases started before the first registration of their associated vehicles. For some, the associated vehicle doesn't appear to have existed on the DVLA database at all. The FCA also said the company valuation of their stock of vehicles wasn't at all realistic.

In addition to that, a report by the administrators of one of the connected companies found

that it had entered into around 3,600 individual agreements with investors. Each agreement should've been associated with a specific vehicle. However, the company only had legal title to around 600 vehicles.

For these reasons, I'm satisfied the evidence shows that the company wasn't operating in the way it had told Mr S it would. The features of the investment he believed he was making were absent. The purpose for which the company procured the payments from him was, therefore, not aligned with the purpose Mr S had in mind for those payments.

The SFO has also said that the former company directors are accused of providing investors with false information and encouraging people to invest despite knowing their investments weren't really backed up by individual cars. In the light of that, I'm persuaded that it's more likely than not that the discrepancy between the company's purpose in procuring the payment and Mr S's in making it was the result of dishonest deception on the part of the company. As a result, I'm satisfied the circumstances here meet the definition of an APP scam under the CRM code.

Should Mr S be reimbursed under the CRM Code?

I've gone on to consider whether NatWest was required to reimburse Mr S under the terms of the CRM Code. This Code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mr S fell victim to, in all but a limited number of circumstances. It is for the firm to establish that one of the exceptions to reimbursement applies.

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

- The customer ignored an effective warning in relation to the payment being made; or
- The customer made the payment without 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.

NatWest has said that Mr S would've seen a warning when making these payments, but I'm not persuaded it was an effective warning, as defined in the CRM Code. It would've told Mr S to be wary if the investment offered "*returns that seem too good to be true.*" While the returns on offer here were generous, I don't think they were so generous that they ought to have put a potential investor on notice that it might not be a legitimate opportunity.

Furthermore, the warning recommended Mr S carry out checks on the FCA website. But one of the companies involved here was regulated by the FCA and there were no published fraud warnings regarding its activities. In other words, if Mr S had done what the warning recommended he do, this would likely have reassured him rather than dissuaded him from making the investment. Overall, I'm not persuaded that I can conclude he ignored an effective warning in relation to any of these payments.

I've also considered whether Mr S made these payments with a reasonable basis for believing the investment was a legitimate one. From what I've seen, the communication he had with the company and the documents he received about the investment all appeared professional and legitimate. That is reflected in the same information received by other victims of this scam.

The way Mr S was told the investment would work isn't inherently problematic and he wasn't promised returns that were objectively too good to be true. In addition to that, the company

had been operating for several years and its partner company was authorised by the FCA. Overall, I'm not persuaded there was anything about the investment that should have caused Mr S significant concern or that NatWest has established that he made the payments without a reasonable basis for believing the investment to be legitimate. It follows that it should reimburse him under the CRM Code.

Other issues

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 S is now complaining to us about in connection with the activities of NatWest.

As I have determined that this complaint should be upheld Mr S 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 S has already made a claim at FSCS in connection with Raedex, and in the event the FSCS pays compensation, Mr S is required to repay any further compensation they receive from their 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>

Final decision

For the reasons I've explained above, I uphold this complaint. If Mr S accepts my final decision, National Westminster Bank Plc needs to refund the payments made in connection with this scam that took place after 28 May 2019, less the monthly returns that were payable in connection with those specific agreements.

Mr S entered into two other investment agreements in May 2018 which he hasn't complained about. NatWest should not deduct any returns he received in connection with those investments from the total payable here.

It should also add 8% simple interest per annum to those payments calculated to run from 9 February 2024¹ until the date any settlement is paid. It's possible that funds could be recovered at a later date via the administrators and NatWest is entitled to ask Mr S to sign

¹ The SFO concluded its investigation on 19 January 2024. NatWest had 15 business days from that point to consider the claim and provide an outcome to Mr S and so that is the appropriate point for the interest calculation to begin.

an indemnity to cover this eventuality.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 March 2025.

James Kimmitt
Ombudsman