

The complaint

Mr D complains about NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY (NatWest).

He says that he has fallen victim to a scam and would like NatWest to refund him the money he has lost.

What happened

Mr D was introduced to an investment with a company I will refer to as 'P'.

P was offering investments via loan notes for a number of different building projects with an expected return of 18%.

In February 2020 Mr D made a payment of £10,000 via cheque, and in August 2020 a further payment of another £10,000, this time via faster payment. However, the investment did not work out as planned, and Mr P now considers that he has been scammed.

He made a complaint to NatWest, but it didn't uphold his complaint and said that rather than a scam, it was more likely Mr D had made a high-risk investment that hadn't worked out, so the complaint was brought to this Service with the help of a third party.

Our Investigator looked into things, but didn't think that the complaint should be upheld – they said that there wasn't enough evidence to say that Mr D had fallen victim to a scam.

Mr D asked for an Ombudsman to make a final decision, so the complaint has been passed to me.

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.

Having done so, I have decided not to uphold this complaint. I know this will be disappointing for Mr D, and I am very sorry for the situation they he finds himself in and fully understand that he would want to attempt to recover the money that has been lost. But I need to decide whether NatWest can fairly and reasonably be held responsible for this.

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In broad terms, the starting position is that banks such as NatWest are expected to process payments and withdrawals that a customer authorises it to make, and as it isn't in dispute that Mr D authorised this payment, in the first instance he is assumed liable for the – however this isn't the end of the story.

It isn't in dispute that Mr D authorised the payments he made to P. Because of this the starting position – in line with the Payment Services Regulations (PSR's) 2017 – is that he is liable for the transactions. But he also says that he has been the victim of an authorised push payment (APP) scam.

Mr D made his first payment via cheque, so the Lending Standards Contingent Reimbursement Model Code (CRM Code) doesn't apply to this payment.

However, this doesn't alter the fact that at the time, NatWest should also have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) though. And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

Looking at the amount of the payment, I think that arguably there was justification for NatWest to have got in touch with Mr D before processing it. However, in order for me to uphold this complaint, I would have to think that an intervention would have prevented the payment, and I'm afraid that I don't think it would.

Had NatWest contacted Mr D about what he was doing – I think he would have told them that he was making an investment, and that he had authorised the payment. Mr D had been provided paperwork from P regarding the agreement he was entering into, and I don't think that NatWest would have had any concerns about what he was doing.

While I understand that Mr D's representative has said that he wasn't an experienced investor, and NatWest should have questioned why they were making a payment to such a risky investment, he had already made the decision to invest having received paperwork from P, and it wasn't for NatWest to assess the suitability of a third-party high-risk investment.

NatWest's role here was to make the payment that Mr D told it to make. And I find that NatWest couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr D's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request, would've gone far beyond the scope of what I could reasonably expect of NatWest in any proportionate response to a correctly authorised payment instruction from its customers.

The second payment was made via faster payment, and as NatWest has signed up to the voluntary CRM Code, which provides additional protection to scam victims, I have considered this payment in line with the Code

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.

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.

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in

the code is as follows:

“This Code does not apply to:

b) private civil disputes, such as 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.”

I’ve therefore considered whether the second payment Mr D made to P falls under the scope of an APP scam as set out above. Having done so, I don’t agree that it does. I’ll explain why in more detail.

I am satisfied that the first point does not apply here – Mr D intended to pay P, and the evidence shows that it was P that received it. I’ve then considered if Mr D’s intended purpose for the payments was legitimate, whether the intended purposes Mr D and P were broadly aligned and, if not, whether this was the result of dishonest deception on the part of P.

The documentation I have seen sets out the general plan for the project relating to a gas peaking plant already purchased by P. This set out the expected returns and the agreements already made with energy companies. It is my understanding that P also set out that the opportunity was only available to high-net-worth individuals, and that there were significant risks involved, including the loss of all assets invested.

I understand that Mr D’s representatives have said that Mr D was not an experienced investor – and that he would not have entered into such a high-risk unregulated investment. But it is not NatWest’s responsibility to protect Mr D from a bad bargain. And while high-risk investments can mean that a consumer may lose money or not get the returns anticipated, this doesn’t mean that it is a scam.

While I understand that Mr D’s representatives say that the investment could be a Ponzi scheme, I haven’t seen any evidence to support what it has said. And I haven’t seen anything to suggest that P set out to deliberately defraud investors and not invest their funds in the project.

On balance, I have not seen enough for me to be satisfied P was operating as a scam. Based on what I’ve seen so far, I think it’s more likely P was a genuine company with a legitimate project that unfortunately has not worked out as planned. So, having carefully reviewed everything, I currently think it’s more likely Mr D made a high-risk investment to a legitimate company. I therefore think it was reasonable that NatWest treated Mr D’s claim as a civil dispute and did not consider it under the CRM Code.

I also don’t think that NatWest could have done anything to recover these funds from the recipient account. Given that it was several years after the payments Mr D made before he raised his concerns, and that P had gone into liquidation by that time, I think it very unlikely that any funds would have remained for recovery.

It is possible that further evidence may come to light at a later date, which may indicate P was operating a scam. Should such evidence come to light, then Mr D can complain to NatWest again, and refer the matter to this office, should he not be happy with the outcome.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or

reject my decision before 26 June 2025.

Claire Pugh
Ombudsman