

The complaint

Ms C complains that National Westminster Bank Plc didn't do enough to prevent her losing money to what she says was a scam.

Ms C has used a representative to bring her complaint. But for ease of reading, I'll mostly just refer to Ms C herself, where I also mean the representative.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In 2022 Ms C made a series of payments to 'S'. At the time she believed this was to invest in art. But she says that in 2023 S went into liquidation and Ms C now believes she was scammed.

Between July and November 2022 Ms C made 17 payments to S. These were a mixture of debit card payments and transfers. They ranged in value from £264 to over £48,000 and together totalled over £190,000. She also received one credit back from S of £1,000, in October 2022.

In July 2023 Ms C complained to NatWest. She alleged they'd failed to do enough to protect her and she is seeking her outstanding loss from them. NatWest didn't offer to provide any redress, in summary they said they couldn't be sure that S had been operating a scam and that they would delay their decision until the conclusion of various investigations.

One of our Investigators considered the complaint and didn't recommend it should be upheld. She didn't think NatWest had acted unfairly in the circumstances. Ms C disagrees and has asked for an Ombudsman to review her complaint.

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've reached the same outcome as our Investigator and for largely the same reasons. I know this will be disappointing for Ms C, so I'll explain why.

In broad terms, the starting position at law is that a business is expected to process payments and withdrawals that a customer authorises them to make, in accordance with the Payment Services Regulations 2017 (PSRs) and the terms and conditions of the account.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't take their customer's authorisation at 'face value' – or that they should look at the wider circumstances surrounding a transaction before making the payment.

So even where a payment is 'authorised' by the customer, there will still be occasions when it's fair and reasonable to expect the business to reimburse the customer. In this particular case, the Lending Standards Board's Contingent Reimbursement Model (CRM Code), which NatWest were a signatory to, is a relevant consideration.

The CRM Code is a scheme through which victims of authorised push payment fraud, can sometimes receive redress from the banks involved. But the CRM code only applies to specific and defined circumstances. Notably, card payments are excluded. So, I'll come on to address Ms C's debit card payments separately below. But I do need to decide whether the 'push payments' Ms C made are covered by the CRM Code.

The CRM Code defines its own scope and states at DS2(2) that *"This Code does not apply to... 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."*

Part of the CRM Code definition of an Authorised Push Payment Scam (APP Scam) includes where *"The Customer transferred funds to another person for what they believed were legitimate purposes but which in fact were fraudulent."*

Having carefully considered all the information provided by both sides, I can't fairly require NatWest to provide redress under the CRM Code (or any other of their obligations). This is because I'm not persuaded that S were, more likely than not, operating a scam.

What was the purpose of the payments?

In the circumstances here, Ms C believed she was purchasing art as an investment in exchange for her payments. This is supported by the invoices she's provided for the purchases.

So part of my consideration must be whether there is sufficient evidence to support that S' intention when taking the payments was meaningfully different to what Ms C thought at the time. Ms C has explained in some detail why she thinks it was. These include a judgement handed down in relation to the freezing of accounts linked to the alleged scam and an affidavit from the liquidator which was submitted to the court. I'll cover the main arguments made below.

Misrepresentation

I acknowledge that there is strong evidence to support that S' investment scheme was misrepresented to investors. In particular that S gave the impression they were acting as a broker rather than a retailer of art and that they would manage the portfolios and provide advice on what to buy and sell, as well as when to resell.

In the hearing that Ms C refers to above, the judge also made several references to the possibility of S having intended to defraud customers. However, it was made explicitly clear by the judge that this was something that was going to be considered in a trial and was not within the remit of the hearing in question. The hearing was solely in relation to the freezing orders.

So whilst there is a potential claim for misrepresentation and a breach of fiduciary duty, I find that both parties were still of broadly the same understanding for the reasons of the payments for the purposes of the application of the CRM Code. That being the purchase of art (and that the customers portfolio would be managed).

Inflated values of artwork

The judge acknowledged that brochures and information given to investors indicated the company only made profit via a 2% fee on sale and a 5% profit on any resale. Reference was also made to the fact that there wasn't clear communication with the investors, specifically that S were purchasing art at wholesale prices and selling it on with a significant markup which on average was nearly 500%. There was also the point raised of the potential for S to have not acted honestly in failing to disclose their own interest and the profits they were making.

Numerous arguments were made by the parties involved on this point. But ultimately the judge concluded that "...the issue of value was one for trial." And on a broader point, to a certain extent the value of a piece of art is subjective and less easily ascertained in what is a comparatively illiquid market. There was a variety of art, from both well established and newer artists and each would've had their own opinions as to the value of their work which as I've said isn't subject to a strictly objective test.

Further to this, the judge was also presented with evidence which showed artwork was purchased from artists and companies. It was also submitted that it wasn't unusual for there to be a significant mark up by art retailers (although perhaps not to the extent of S).

Overall, I don't find the value of the art sufficient to evidence a scam took place in relation to Ms C. And as mentioned above, the value being allegedly unreasonably inflated is something that was due to be discussed in court.

Secondary market for the art

The judge further referenced that there was no real secondary art market and that this was contrary to what investors were told. S didn't appear to resell art at auction or by other means. Rather, the company seems to have bought back prints itself at an increased price in response to investors pushing for a sale.

There was therefore no genuine increase in market value. None of this was disclosed to the investors, but rather the company used the buy backs to seek to persuade investors to buy more prints. Investors were also encouraged to increase the size of their portfolio with the company to improve their chances of selling prints at a profit

It is accepted that the judge's comments and the evidence presented raise questions about the way the company was operating, as well as support a potential claim for misrepresentation. However, the judge made it clear that the merits of any fraudulent activity taking place was not within the remit of the hearing and was something that had to be considered in a trial.

I have also considered the judge's findings that there is a good arguable case for fraud. However, I'm not persuaded the judge's comments mean it is more likely than not that Ms C has been scammed. I say this because the judgement makes clear the threshold for a 'good arguable' case is low – lower than 50%. The judgment says:

"6. The test which has to be satisfied to establish a good arguable case on the merits was laid down by Mustill J in Ninemia Maritime Corp V Trave Schiffahrtsgesellschaft GmbH ("The Niedersachsen") [1983] 2 Lloyd's rep 600 605, as:

"... one which is more than barely capable of serious argument, but not necessarily on which the judge considers would have better than 50 per cent

chance of success.”

8. Given that the test sets a relatively low threshold on the merits...”

Given the applicable low test, I’m not persuaded the judge finding there is a ‘good arguable case on the merits’ equates to it being more likely than not Ms C has been scammed. Indeed, throughout the judgment the judge refers to such matters as needing to be decided at trial. That is very far from any argument that the judgment ‘confirms that the true purpose was fraudulent and that there was an intent to defraud’ – which is Ms C’s argument – which it does not.

I’ve considered the further points Ms C has made in response to the above findings. Much of this focusses on the language used in the judgement. Reference was also made to the relative knowledge and information available to the judge and our service and the seniority of the judge. But the key fact remains that the judge was explicit that findings as to the alleged fraudulent activity or valuations of art were matters for a future trial. So none of the further submissions have impacted my thoughts as to the outcome of this complaint.

Police involvement

I accept there is a police investigation. And I agree that is a concerning factor. But as I’m yet to see evidence that this has concluded and it might find that there is no case to answer, I don’t think this is sufficient (either on its own or in combination with other evidence) to conclude that a scam has taken place.

Summary of the alleged scam

Our service makes its findings on the balance of probabilities as to what is more likely than not to have happened. And on that basis taking all the evidence and arguments into consideration, I’m not currently persuaded that S intended to defraud Ms C when accepting the payments from her.

I’m also aware that legal action against S has more recently concluded by means of a confidential settlement agreement. And the information I do have is that the agreement was reached on a ‘non-admission of liability basis’. I don’t think I can fairly say that a settlement being reached, on such a basis, is sufficient to persuade me (when taken in conjunction with all the other available evidence and arguments) that S intended to defraud Ms C. There can be a variety of reasons for a settlement being reached, not least a desire to minimise costs.

I’ve also taken account of the fact that there is evidence to support that S had contracts with artists, including one in particular who appears to have had an exclusive deal for them to sell their work. There is also evidence to support that S had further contracts with printers and storage facilities for the art. And as I’ve mentioned above, it doesn’t seem to be in dispute that there was real art in existence, the nature of the alleged scam primarily surrounds the value of the same. And whilst none of these factors are conclusive in their own right, they don’t support the argument that there was no genuine business taking place and that S’ intention was to scam its customers (and Ms C in particular) from the start.

I know Ms C disputes this, but the available evidence has been considered holistically in reaching this outcome. This includes the information provided from the liquidators, something I know she doesn’t think enough weight has been given to. The liquidators information does raise the question of some potentially dubious business practices, but it doesn’t persuade me that S’ intention when taking the payments was to defraud Ms C. And key to some of those submissions is the amount paid for art compared to its true value. But

as I've set out above, art valuation is subjective and something the judge had concluded should be decided at a trial.

If in the future, further evidence demonstrates that the investment scheme was fundamentally different in purpose and does meet the CRM Code's definition of an APP scam, then Ms C can ask NatWest and us to reconsider her complaint. But as things stand, I can't require NatWest to refund Ms C under the CRM Code.

Are there any other reasons why NatWest should provide reimbursement?

I've considered whether NatWest should provide reimbursement for any reasons outside of the CRM Code. NatWest should do all they can to try to prevent fraud and scams and to protect their customers from the same.

Given my finding above, there is no basis upon which NatWest should intervene in authorised payments (unless there is a fraud or scam to protect against). But in the circumstances here, even if I were to accept that S were operating a scam (something I am explicitly not finding in line with the above), I don't think any reasonable level of questioning or warnings at the time would've prevented Ms C from going ahead with her payments. Despite the information that has since come to light there was nothing at the time to suggest a potential problem with S. The same applies to any intervention that might reasonably have been expected in relation to the debit card payments some of which were for significant sums.

Debit card payments

I've mentioned above that I don't think NatWest reasonably should've stopped Ms C's debit card payments. And the only potential avenue for recovery of these would've been through the chargeback scheme.

A chargeback is the process by which disputes are resolved between card issuers and merchants, under the relevant scheme rules. This means that NatWest, in certain circumstances, can ask for a payment Ms C made to be refunded. One of those circumstances is where the goods or services aren't supplied or as described by the merchant Ms C paid.

A chargeback isn't guaranteed to result in a refund. There needs to be a right to a chargeback under the scheme rules. And under those rules the merchant can defend a chargeback if it doesn't agree with the request.

There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But we would consider it good practice for a chargeback to be attempted where the rights exist and there is some prospect of success.

However, the scheme sets the rules and there are specific time limits that must be applied. Those rules state that a claim can be brought no later than 120 days after the date of the transaction. In Ms C's case, the claim was referred to NatWest after this time, so I don't find that chargeback was an option for Ms C.

Conclusion

Overall, I'm not persuaded the available evidence at this time supports that it's more likely than not that Ms C was scammed by S (in line with the CRM Code definition). I don't think NatWest reasonably should've prevented the payments being made or otherwise should have done more to try to recover her funds.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 21 August 2025.

Richard Annandale
Ombudsman