DRN-5211141

The complaint

Mr T complains that National Westminster Bank Plc ("NatWest") won't refund money he lost when he fell victim to a scam.

Mr T is being represented by a claims management company in this complaint.

What happened

In January 2021, Mr T invested in a company – Buy2Let/Raedex Consortium Ltd ("R") – which leased cars. He invested £14,000 by making two faster payments from his NatWest account and expected to receive a return of 10% per year on his investment.

Mr T's understanding of the investment was that it would fund a new lease car for a UK driver for three years. His capital would be repaid in monthly instalments over the term with a final payment plus the interest being paid at the end of this.

R went into liquidation in the weeks following Mr T's payments. According to NatWest's records, Mr T contacted the bank about the payments in March 2021. But it's unclear from those records whether Mr T told the bank that he believed he'd been the victim of a scam, or whether he raised a merchant dispute (goods and services not received).

In 2023, Mr T complained to NatWest that he'd been scammed by R and asked to be reimbursed under the Lending Standards Board (LSB)'s Contingent Reimbursement Model (CRM) Code. NatWest declined his claim for a refund and said this was a civil dispute between the parties.

One of our investigators looked into Mr T's complaint and concluded that the evidence showed there was a clear discrepancy between the payment purposes Mr T and R had in mind, so this met the CRM Code's definition of a scam. They thought Mr T had a reasonable basis for believing that the investment was legitimate. So, they recommended NatWest to refund Mr T's losses in full, plus 8% simple interest per year calculated from 15 days after the date the directors of R were charged by the Serious Fraud Office (SFO) to the date of settlement.

Mr T accepted the investigator's findings, but NatWest didn't. In summary, it states that although the SFO has concluded its investigation and charged the directors, the case is still progressing through the courts. The bank also argues that there's currently no evidence to suggest that R wasn't operating legitimately. NatWest has asked how this service has concluded that R's intentions were in fact fraud, noting the ongoing criminal investigation and the accused parties' right to be assumed innocent, which it says means that the objective test under the CRM Code (i.e., intentions were in fact fraudulent) can't be met at this stage.

As an agreement couldn't be reached informally, the case has been passed to me to decide.

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 decided to uphold this complaint. I'll explain why.

When considering what is 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 relevant time.

In broad terms, the starting position in law is that a payment service provider like NatWest is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It's a voluntary code which requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams like this in all but a limited number of circumstances. NatWest was a signatory to the CRM Code at the time the payments in dispute were made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the CRM Code's definition of a scam. An "APP scam" is defined as:

> *"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

If I conclude that the payments meet the definition of a scam, as defined above, then Mr T would be entitled to reimbursement unless NatWest has shown that any of the exceptions as set out in R2(1) of the Code apply.

Can NatWest delay making a decision under the CRM Code?

The CRM Code says firms should make a decision on whether to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

Before the investigator issued their assessment on this case, NatWest told our service it considers that R3(1)(c) applies in this case.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision – for example by telling the consumer they will not be reimbursed because they are not the victim of an APP

scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *"a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code".*

- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision, a consumer is entitled under the DISP Rules to ask our service to decide the merits of the complaint about the payment(s) they made fairly and reasonably on the balance of probabilities.

So, this provision only applies before the firm has made its decision under the CRM Code. NatWest had already reached a decision on Mr T's claim in its final response letter to him and in its initial file submission to this service, when it said the this was a high-risk investment and a civil dispute between Mr T and R. Therefore, the bank can't seek to delay a decision it's already made.

What this means is that NatWest can't now rely on the R3(1)c provision.

Is it appropriate to determine Mr T's complaint now?

The SFO had been carrying out an investigation into the car leasing company and several connected companies. That investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of R's former company directors with fraud, on its website.

NatWest has argued that the case is still progressing through the courts and the accused parties' right to be assumed innocent means that the test under the CRM Code can't be met at this stage.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence that is already available. And I'm conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

The LSB has said that the CRM Code doesn't require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, in order to determine Mr T's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it's more likely than not that he was the victim of a scam rather than this being a failed or a bad investment.

I'm required to determine complaints quickly and with minimum formality. In view of this, I don't think it would be appropriate to wait to decide Mr T's complaint unless there's a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available.

It's not clear if NatWest is concerned that any subsequent court action regarding R's actions may lead to Mr T being compensated twice for the same loss, i.e., by NatWest and by the courts. But I don't know how likely it is that any funds will be recovered as part of those proceedings.

Similarly, I'm aware that there is an ongoing administration process – including liquidation. This might result in some recoveries; but given this would initially be for secured creditors, I think it's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive. That said, in order to avoid the risk of double recovery, 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.

I'm also aware that 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 payment service providers related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for the FSCS to determine, and under its rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mr T is now complaining to us about in connection with the activities of NatWest.

As I've determined that this complaint should be upheld, Mr T should know that as he will be recovering compensation from NatWest he can't claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount he recovers from NatWest, he *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 its rules).

Further, if Mr T has already made a claim at FSCS in connection with this matter, and in the event the FSCS pays compensation, he's required to repay any further compensation he receives from his complaint against NatWest, up to the amount received in compensation from FSCS.

The Financial Ombudsman Service (FOS) and FSCS operate independently, however in these circumstances, it's 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

While the FSCS may be taking on these cases against R as a failed unregulated investment, it doesn't automatically follow that this was not a scam. This is not something that the FSCS would make a finding on before considering those claims.

As NatWest can ask Mr T to undertake to transfer to it any rights it may have to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing him in line with the CRM Code's provisions.

So as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case (which is scheduled to commence in almost two years), nor do I consider it necessary to wait for the administration process to complete or wait for a claim with FSCS to be made, overall, I don't think it's fair to delay making a decision on whether NatWest should reimburse Mr T any further.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the court case for me to reach a fair and reasonable decision. And I don't think it would be fair to wait for other investigations to complete before making a decision on whether to reimburse Mr T.

Has Mr T been the victim of a scam, as defined in the CRM Code?

As referenced above, NatWest has signed up to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I've considered the first part of the definition and, having done so, I'm satisfied that Mr T paid the account he was intending to send the funds to, particularly given that he'd done so previously. And I don't think there was any deception involved when it comes to who he thought he was paying. So, I don't think the first part of the definition set out above affects Mr T's transactions.

I've gone on to consider if Mr T's intended purpose for the payments was legitimate, whether the intended purposes he and the company (R) he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of R.

From what I've seen and what Mr T has told us, I'm satisfied that he made the payments with the intention of investing with the car leasing company. He thought his funds would be used to purchase a vehicle which would then be leased out, and that returns would be received on this investment. I haven't seen anything to suggest that Mr T didn't think this was legitimate.

I've considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or genuine investment. And the evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payments it had agreed with Mr T. Mr T was told his capital would be used to fund a specific new vehicle and that it would be secured in his favour until the loan is repaid, by way of a fixed charge. But there's no evidence this was the case or that Mr T's funds were secured against a specific vehicle.

The FCA also checked a sample of the vehicles the companies held against the DVLA database and found a significantly larger proportion of these were second-hand than R's business model suggested or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles. It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles were not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

I've not seen a record at Companies House of any charge in Mr T's favour over any vehicle with the company following his investment. And, as I think the evidence shows the company was largely not carrying out this key aspect of the investments, I think it's safe to conclude that this wasn't done in Mr T's case either.

So, I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mr T to believe he was making. And so, the purpose the company intended for the payments Mr T made wasn't aligned with the purpose he intended for the payments.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in while knowing that investments weren't, in reality, backed up by the cars they had been promised. So, I think the discrepancy in the alignment of the payment purposes between Mr T and R was the result of dishonest deception on the part of the company.

As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Is Mr T entitled to a refund under the CRM code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr T. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning.

Another circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payment 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.

There are further exceptions within the CRM Code, but they do not apply in this case.

Although NatWest hasn't established that any of the relevant exceptions apply, for completeness I find that none apply in this case.

I say this because the way Mr T was told the investment would work doesn't appear to be suspicious, and the returns he was told he would receive don't appear to be too good to be true. And, in line with a genuine investment opportunity, the brochure stated that the investment wasn't completely guaranteed. The investment material and communications with R I've reviewed appear professional, and there was nothing in the public domain at the time about R that Mr T could have reasonably inferred from that a scam was taking place.

It appears that the company had been operating for several years. One of the connected companies was authorised and regulated by the FCA, and a number of previous investors had received the returns they were told they would receive. So, I don't think there was anything about the investment that should have caused Mr T concern.

NatWest hasn't alleged that Mr T made the payments without a reasonable basis for belief that the investment was legitimate. Also, it has been unable to confirm what, if any, warnings were provided at the time of the payments. So, I can't fairly say Mr T ignored an effective warning.

As I don't think NatWest has established that any of the exceptions to reimbursement under the CRM Code apply here, it should refund the money Mr T lost in full.

Putting things right

I don't think any intervention action I would have expected NatWest to take would have prevented Mr T from making the disputed payments. This is because I don't think any of the information that I would have reasonably expected NatWest to have uncovered at the time of the payments would have uncovered the scam or caused it significant concern.

Also, I don't think it was unreasonable for NatWest to initially decline Mr T's claim under the CRM Code, as it wasn't clear from the evidence available at the time that this was a scam.

But the CRM Code allows firms 15 days to make a decision after the outcome of an investigation is known. So, I think NatWest should have responded to Mr T's claim and refunded his 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.

Therefore, in order to put things right for Mr T, National Westminster Bank Plc must:

- Refund Mr T the disputed payments he made as a result of this scam, i.e., £14,000; and
- Pay 8% simple interest per year on that refund, from 15 days after 19 January 2024 until the date of settlement[1].

As the car leasing company is now under the control of administrators, it's possible Mr T may recover some further funds in the future. In order to avoid the risk of double recovery 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 given, my final decision is that I uphold this complaint. I direct National Westminster Bank Plc to put things right for Mr T as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 February 2025.

Gagandeep Singh
Ombudsman

[1] If NatWest considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr T how much it's taken off. It should also provide a tax deduction certificate if Mr T asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.