

The complaint

Mr and Mrs L complain that National Westminster Bank Plc ('NatWest') won't refund the money they say was lost as the result of a scam.

What happened

In 2020, Mr and Mrs L made two investments in a company I'll refer to as C.

C would purchase cars with investors' funds, then lease the cars out to individuals who might not otherwise be able to access a leased vehicle.

Mr and Mrs L had invested with C before and received back their investment capital as well as a return of 11%.

In February 2020, Mr and Mrs L made a payment of £7,000 from their NatWest account. Mr and Mrs L were promised a monthly return of £164.69 and, on maturity, a lump sum of capital and interest.

In December 2020, Mr and Mrs L made a further payment of £14,000 from their NatWest account. Mr and Mrs L were promised a monthly return of £267.36 on this payment.

Mr and Mrs L received 11 monthly returns of £164.69 between March 2020 and January 2021.

In March 2021, C went into administration.

Mr and Mrs L believe the investment was a scam, and through a professional representative, raised a fraud claim with NatWest.

NatWest considered Mr and Mrs L's fraud claim but declined to refund them. NatWest say C offered a high-risk investment and Mr and Mrs L should pursue a claim through the administrators. NatWest say they're not responsible for Mr and Mrs L's loss.

Mr and Mrs L weren't happy with NatWest's response, so they brought a complaint to our service.

An investigator looked into Mr and Mrs L's complaint and recommended that NatWest refund their outstanding loss. The investigator says the evidence showed that Mr and Mrs L's funds weren't used for their intended purpose and were obtained by dishonest deception, so their claim is covered by the Contingent Reimbursement Model Code ('CRM Code'). Under the CRM Code, Mr and Mrs L are entitled to a full refund as they had a reasonable basis for believing the investment was legitimate when they made the payments.

NatWest provided a substantial response to the investigator's view, including:

- Concerns about our ability to reach a fair answer having one side of the argument and not being privy to the alleged perpetrator's side. Also, concerns based on the complexity of the case and the ongoing court case.
- Why we're satisfied we can reach an answer as to whether the case is covered by the CRM Code, specifically DS1(2)(ii), without a conclusion to the court case.
- We haven't fairly considered whether this is a failed investment, as there are no charges or guilty pleas in relation to the SFO investigation. Also, C were operating successfully for a significant period of time, and an FCA regulated entity was affiliated with C and the investment. Investors may be entitled to a refund under the FSCS which indicates a failed investment and C retains significant assets related to their "as described" business model.

NatWest asked for an ombudsman to review the case.

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.

NatWest have raised a number of points in response to the view, and I'm aware that our service has previously responded to the points they've raised in detail. I'd like to reassure NatWest that I have considered all the points they've raised. But I've focused my decision on what I consider to be the crux of the complaint and how I've reached my decision.

In broad terms, the starting position in law is that NatWest are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Are Mr and Mrs L entitled to a refund under the CRM Code?

NatWest are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM 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.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr and Mrs L made their payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr and Mrs L thought this purpose was legitimate.
- The purpose the recipient (C) had in mind at the time of the payments and whether this was broadly in line with what Mr and Mrs L understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr and Mrs L were making payments to C as part of an investment. Based on the evidence that Mr and Mrs L had available at the time, I haven't seen anything to suggest they didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose C had in mind and whether it was in line with what Mr and Mrs L thought.

In reaching an answer on what purpose C had in mind, I've considered the wider circumstances surrounding C, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, "encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised".
- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mr and Mrs L's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mr and Mrs L's funds weren't used for the intended purpose and that C obtained the funds through dishonest deception. So, I'm satisfied that Mr and Mrs L's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Mr and Mrs L are entitled to a full refund unless NatWest can establish that an exception to reimbursement applies.

NatWest haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

Does an exception to reimbursement apply?

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 service; and/or the person or business with whom they transacted was legitimate.

- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

** There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

I'm satisfied that Mr and Mrs L had a reasonable basis for believing the investment was legitimate. I say this because they had successfully invested with C before and received both their capital and the promised returns. Also, C were an active company on Companies House, had positive reviews online and provided professional marketing material. I haven't seen any evidence that suggests there were warning signs that C wasn't offering a genuine investment when Mr and Mrs L made their payments in February 2020 and December 2020. So, NatWest couldn't rely on basis for belief as an exception to reimbursement.

NatWest haven't said that an effective warning was ignored when Mr and Mrs L made their payments, but they have provided details of a warning that would've been shown.

The warning said:

Protect your money from fraud and scams.

Are you confident that the payment you're about to make isn't a scam? Tell us your payment reason so we can help you protect yourself.

Mr and Mrs L selected the payment purpose of "making an investment". They were then shown this warning:

Does this investment offer returns that seem too good to be true? Stop – it's likely to be a scam.

Beware of investment opportunities that offer a high return with little or no risk, this could be a scam.

Make safe investments by:

- *Taking the FCA Scam Smart test and check the company is listed or has no warnings against it.*
- *Visit Take Five a trusted organisation that provides guidance on how to stay safe from fraud and scams.*

I'm not satisfied that this warning was effective as the concerning feature of an investment that it highlights is the interest rate being too good to be true. In Mr and Mrs L's case, they had invested with C before and had received the returns promised, which were similar to the returns promised in 2020. So, I'm not satisfied that this would've resonated with Mr and Mrs L, or that I can fairly say they ignored an effective warning.

So, I'm not satisfied that NatWest can rely on this exception to reimbursement either.

As, I'm satisfied that NatWest can't rely on an exception to reimbursement, Mr and Mrs L are entitled to a full refund of £21,000. NatWest can deduct from that refund the returns that Mr and Mrs L received (which total £1,811.59), meaning the net refund should be £18,921.05. Mr and Mrs L refer to a return of £267.36, but I'm unable to find that credit on the statements provided (nor could NatWest). So, I haven't included that in the calculation above.

The interest award

Prior to the SFO completing their investigation, Mr and Mrs L's payments wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, NatWest should've considered the available evidence and given Mr and Mrs L an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

It's possible that funds could be recovered at a later date through the administrators and NatWest are entitled to ask Mr and Mrs L to sign an indemnity to cover this eventuality.

The additional points that NatWest have raised

In this decision, I only need to reach an answer on whether I'm satisfied that I can fairly hold NatWest liable under the CRM Code.

And, based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Mr and Mrs L's payments are covered by the CRM Code, for the reasons explained above. I'm not persuaded I need to wait for any further updates from external parties or organisations to reach my decision.

Claims through 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 and Mrs L are now complaining to us about in connection with the activities of NatWest.

As I have determined that this complaint should be upheld Mr and Mrs L 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 and Mrs L have already made a claim at FSCS in connection with C, and in the event the FSCS pays compensation, Mr and Mrs L are 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>

Putting things right

To put things right I require National Westminster Bank Plc to:

- Refund Mr and Mrs L £18,921.05, and
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement.*
- In order to avoid the risk of double recovery the 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.

* If NatWest considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs L how much it's taken off. It should also give Mr and Mrs L a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against National Westminster Bank Plc and require them to compensate Mr and Mrs L, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 16 January 2025.

Lisa Lowe
Ombudsman