

## **The complaint**

Ms M complains that National Westminster Bank Plc (NatWest) won't reimburse her, after she made payments towards an investment that she now considers to have been a scam – whereby she sent money to an account held at NatWest.

Ms M is professionally represented in bringing her complaint to our service, but for ease of reading I'll refer to all submissions as being made by Ms M directly.

## **What happened**

Ms M has explained that she was looking to invest and was recommended a company, which I'll refer to as 'A', by a friend to advise her. Ms M met in person with the director of A and he recommended a firm for Ms M to invest with, which she did. As the investment performed as expected, Ms M's confidence in A grew. The director of A then suggested Ms M invest with it directly, promising guaranteed returns of 10-12% per annum. Ms M says she agreed to this suggestion and told A she wished to invest in ethical, UK based firms.

Ms M made six payments to A, between January and November 2021, totalling £90,000. From the paperwork Ms M has provided, it appears that the agreements between Ms M and A were in the form of loan notes, which set out how much Ms M had loaned A, the term of the loan and how much and often to expect funds returned.

Ms M initially received returns from A, although these were more sporadic than agreed and of varying values. Ms M has also provided evidence that she had to chase A on numerous occasions to send her funds and would receive different excuses as to why a payment hadn't been made on time. In total, Ms M received £10,600 in returns from A. However, when A failed to provide further returns, Ms M researched the director and found negative online reports, which led her to believe she had fallen victim to a scam. She therefore raised a claim with her bank from where she sent the funds, as well as to NatWest where her funds were received.

NatWest considered Ms M's complaint but didn't uphold it. It didn't consider a bank error had occurred regarding the involvement, or investigation carried out by NatWest. Ms M remained unhappy and referred her complaint to our service. An investigator didn't uphold Ms M's complaint. She didn't think there was sufficient evidence that Ms M was scammed, rather than this being a failed investment and therefore a civil dispute between Ms M and A.

Ms M disagreed, so the complaint has been referred to me for a final decision.

## **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.

I'm sorry to hear that Ms M has paid a significant amount of money to what she thought would be a successful investment, and that's not what has happened here.

In order to determine that NatWest is responsible for Ms M's losses and for it to refund her, I'd first need to be satisfied, based on the available evidence, that the losses she has incurred were as a result of a scam. I'd therefore need to determine that A's reason for procuring the payments was fraudulent. This would mean being persuaded that A had criminal intent at the time it received Ms M's payment to defraud her. Based on everything I've seen, I don't think there is currently enough evidence to support this claim. I've explained why in more detail below.

One of the key issues here in determining whether a scam has taken place is that the purpose for payments wasn't clearly defined in any documentation I've seen, prior to Ms M making payments to A. The loan notes between both parties state what returns Ms M should receive, but do not indicate where or how Ms M's money should be utilised. Therefore, in essence, there is no concrete agreement I can refer to when concluding that the actions A took with Ms M's money *didn't* align with what was agreed. Ms M has stated she requested her funds were to be invested in UK ethical companies, but the only reference I have to this is from an email Ms M sent to A after payments had been made. It's therefore difficult to tie this to the intentions of either party at the point payments were made.

In cases where there's a clear agreement between parties on where money is to be invested, it's somewhat simpler to review what *did* happen to those funds and conclude whether the intended payment purpose was met, but as this didn't happen here, it's difficult to determine - even with the benefit of hindsight and reviewing beneficiary statements - that funds were illegitimately moved on in a way that proves A's intention was to never return funds as agreed to Ms M.

I appreciate Ms M's point that A's director has been linked to other businesses associated with mis-selling, or where concerns have been raised with other relevant schemes. I'm also aware that there is an ongoing Police investigation into the director of A. While there may be merit to Ms M's concerns regarding businesses associated with A, there may also be other, equally possible reasons for A failing to meet its agreement with Ms M here that haven't been yet ruled out. It's also my understanding that further action hasn't yet been taken by the Police against any parties involved in relation to this investment.

Ms M also raised concerns that A wasn't registered with the Financial Conduct Authority. However, a business doesn't need to be regulated to issue a loan note and so this act, in and of itself isn't sufficient to conclude that A acted outside of regulatory requirements.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as A) can fail or be mismanaged such that contracts are breached and agreed returns aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

Unfortunately, it's not possible to know with certainty what A's intentions were when Ms M made her payments to it - but before I can consider whether NatWest is liable for any of Ms M's losses, I'd first need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Ms M and A. That also means being able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of A breaching its legitimate contract with Ms M through financial mismanagement or other reasons.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that A set out to defraud Ms M with criminal intent. That is a high bar to meet. Ultimately, without clearer evidence of how Ms M's money *ought* to have been utilised, it

becomes difficult to determine that A deceived Ms M with intent from the outset for actions it subsequently took.

I appreciate how frustrating and disappointing this answer will be. Ms M has lost a lot of money as a result of this investment. But I can't exclude the possibility that A entered the agreement in good faith, intending to fulfil the contract and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude, when weighing up these alternative possibilities, that it's more likely A intended to steal her money from the outset and never had any intent of fulfilling the arrangement in full or in part.

As I'm not persuaded this was a fraud or scam, there was no basis for NatWest to have intervened in the operation of the recipient account, or to have prevented Ms M's funds from leaving it for that reason. Additionally, our service only has powers to consider complaints about receiving firms since 31 January 2019 – and we can't consider any acts or omissions carried out by a receiving firm that occurred before this date. In this case, as the beneficiary account opened prior to 2019, I am unable to comment or make a finding about the account opening process – as the act of NatWest opening the account happened prior to when our service had the power to look into complaints about receiving firms.

I've also considered NatWest's response when it received the scam claim from Ms M's own bank. I can see that NatWest responded to Ms M's bank on the same day it received the claim, confirming it considered the matter to be a civil dispute and therefore funds weren't recoverable. I therefore think it dealt with the notification from Ms M's bank appropriately.

Legal proceedings may uncover new evidence or change the basis on which this case has been considered up until now. However, I have to decide the case on the facts and information currently available to me. Based on the evidence currently available, I'm not able to conclude there is sufficiently persuasive evidence that shows this to be a scam. And I therefore don't think NatWest can be held responsible for Ms M's losses.

If new material information does come to light, at a later date, then a new complaint can be made to NatWest. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

**My final decision**

My final decision is that I don't uphold Ms M's complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 19 March 2025.

Kirsty Upton  
**Ombudsman**