

## **The complaint**

Mr S complains that National Westminster Bank Plc won't refund the money he says was lost as the result of a scam.

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

## **What happened**

Mr S has explained he had invested with a firm in 2014 which I'll refer to as B. The investment had a three-year term which successfully ran its course, with Mr S receiving everything he had been promised. Therefore, when B contacted him again with a further investment opportunity, Mr S was interested in the offer.

Mr S was told that B would purchase cars with investor's funds, then lease the cars out to individuals, with Mr S receiving a 12% return. Despite having invested previously with B, Mr S has explained that prior to investing a second time, he re-checked B on Companies House and checked their up-to date performance based on recent reviews.

On this basis, in March 2020, Mr S made four faster payments on consecutive days, each for £14,000. His understanding was that with this, B would purchase four cars. When making a payment to B, NatWest states Mr S would've seen the following warning:

### ***'Protect your money from fraud and scams***

...

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

### ***Make safe investments by:***

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

Mr S received monthly returns of £1,069.44 per month, as expected, for the first ten months (April 2020 to January 2021). However, B then went into administration in March 2021.

Mr S believes the investment was a scam and raised a fraud claim with NatWest.

NatWest considered Mr S' fraud claim but declined to refund him. NatWest said this was a civil dispute between Mr S and B and he should look to recover any available funds through the relevant administration process.

Mr S wasn't happy with NatWest's response, so he brought a complaint to our service. An investigator looked into Mr S' complaint and recommended that NatWest refund his outstanding loss. The investigator said the evidence showed that Mr S' funds weren't used for their intended purpose and were obtained by dishonest deception, so his claim is covered

by the Contingent Reimbursement Model Code ('CRM Code'). Under the CRM Code, the investigator considered Mr S is entitled to a full refund as he had a reasonable basis for believing the investment was legitimate when he 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 perpetrators 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, B were operating successfully for a significant period of time, and an FCA regulated entity was affiliated with B and the investment. Investors may be entitled to a refund under the FSCS which indicates a failed investment and B 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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I have reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

NatWest has raised a number of points in response to the view, and I'm aware that our service has previously responded to the points it's raised in detail. I'd like to reassure NatWest that I have considered all the points it has 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 is 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).

#### *Is Mr S entitled to a refund under the CRM Code?*

NatWest is 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 S made his payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr S thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Mr S 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 S was making payments to B as part of an investment. Based on the evidence that Mr S had available at the time, there isn't anything to suggest he didn't think this was a legitimate purpose.

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

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, 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 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 S' funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Mr S' payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Mr S is entitled to a full refund unless NatWest can establish that an exception to reimbursement applies. I've therefore considered whether there are any exceptions under the CRM Code that would mean that Mr S isn't entitled to a full refund.

#### *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 S had a reasonable basis for believing the investment was legitimate. I say this because Mr S has provided evidence that he had successfully invested with B previously, which I think would have allayed any concerns he may have had. However, despite this, Mr S has said he still checked B online to obtain a more up-to date picture of the business. B was an active company on Companies House and had positive reviews online. I therefore think Mr S had a reasonable basis for believing B was a legitimate investment opportunity at the time he made his payments towards the scam.

NatWest has provided a screenshot of an investment warning (mentioned above) from the time Mr S made his payments (although it hasn't evidenced that this was a warning Mr S selected during the payment process). In any event, I don't think the warning would be considered 'effective' under the CRM Code. It doesn't provide any context into how these scams may, in reality feel, or how they may be presented to victims. It also doesn't set out the consequences of proceeding with the payment, which is a requirement of the CRM Code in order for a warning to be considered effective.

An effective warning is, in any event, a minimum requirement under the CRM Code where a payment presents a higher risk of fraud. While Mr S did make other payments of a similar value to the scam ones from his account in the 12 months preceding the scam, these scam payments were to a new payee and across four consecutive days, which I consider ought to have triggered further intervention. While I don't think a call from NatWest would've uncovered the scam, (based on the lack of negative information available online at the time about B, and Mr S' previous successful investment) full reimbursement under the Code is not dependent on a bank's ability to be able to have stopped a scam if it is determined that the customer acted reasonably, which as I've already explained, I think Mr S did here.

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 S is entitled to a full refund of £56,000. NatWest can deduct from that refund the returns that Mr S received (which total £10,694.40), meaning the net refund should be £45,305.60.

#### The interest award

Prior to the SFO completing their investigation, Mr 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 S 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 S 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 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 the FSCS's position on claims submitted to the 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 the 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 S is now complaining to us about in connection with the activities of NatWest.

As I have determined that this complaint should be upheld, Mr S should know that as they will be recovering compensation from NatWest, they cannot claim again for the same loss by making a claim at the 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 the FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr S has already made a claim at the FSCS in connection with B, and in the event the FSCS pays compensation, Mr S is required to repay any further compensation they receive from their complaint against NatWest, up to the amount received in compensation from the FSCS.

FOS and the FSCS operate independently, however in these circumstances, it is important that the 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 S £45,305.60
- 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, 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**

My final decision is that I uphold Mr S' complaint against National Westminster Bank Plc and require it to compensate Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 March 2025.

Kirsty Upton  
**Ombudsman**