

The complaint

Mr M is unhappy that National Westminster Bank Plc decided not to refund him after his was the victim of a scam.

What happened

Mr M was introduced to an investment opportunity, in November 2019, by a friend, Mr T. Mr T explained he'd been investing money with T and it was going really well. He'd invested 5k and had been sent a statement of his profits. In the following months, Mr T was able to withdraw money from his investment and showed Mr M. Mr T suggested Mr M give T a call and start investing.

Mr M says he was told T had been trading for a long period of time, 5 plus years. And that T had plans of getting an office.

Mr M called T, he explained what he did, which was using Mr M's money to place trades in forex. He would split the profits 50/50 from his trades with Mr M. Mr M would receive a guaranteed 10% profit a month, on his investment. In addition to that, he was told none of his upfront capital was at risk. He was also told that there was a possibility that he might earn more than 10% per month and that the extra would be split between him and T.

Mr M went on to make four payments between 02 December 2019 and 15 January 2020, totalling £7,500. The first was an online banking payment, the following three payments were made via telephone banking.

Mr M says each month he received monthly updates of his 10% returns. With photo proof of the trades being placed. Mr M says this was all managed on a group WhatsApp chat. Mr M became concerned when he attempted to withdraw money from the investment. T informed him that he was experiencing minor issues with his account and urged Mr M to remain patient. T also sent emails suggesting that his bank account would soon be re-opened. However, Mr M never received any returns from the investment.

Once Mr M determined that he'd fallen victim to a scam, he notified NatWest. NatWest looked into things, but it didn't agree to refund his losses. It said that it couldn't provide an answer at the time as there was an on-going investigation into the matter.

Mr M wasn't happy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator considered the complaint under the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. In summary she concluded:

- Although Mr M says he was recommended the investment by a personal friend and he received an "Investment Management Agreement" she didn't think that was enough to have reasonably persuaded Mr M that this was a legitimate investment opportunity.
- He received no real documentation to show how the investment worked.

- Mr M had experimented with forex trading himself – so he had some understanding or ought to have had some understanding of the difficulties in guaranteeing these returns without any risk.
- The returns were unrealistic both in terms of the percentage return he was expecting to receive each month and that his capital wasn't at risk.
- The investment was unregulated, and funds were sent to personal accounts.
- NatWest couldn't provide the call recordings at the time Mr M made the larger payments over telephone banking – so it couldn't show that it provided effective warnings at the time the payments were made – as it is required to do under the CRM code.

The investigator concluded that NatWest did not need to provide a warning or intervene with the first payment, given its value. But she went on to say NatWest did not meet the firms' standards under the CRM code as it could not evidence that it provided effective warnings at the time Mr M made payments two through to four. But Mr M did not have a reasonable basis of belief that the investment was a legitimate one at the time so he should also be held partly liable for his losses.

The investigator recommended that NatWest refund Mr M, 50% of his losses, from payment two onwards, plus pay 8% simple interest from the date it declined the claim under the CRM code.

Mr M didn't accept the investigators findings, he said:

- NatWest has not evidenced that it provided effective warnings for the telephone banking payments. The absence of this evidence reasonably leads to a conclusion that it failed to meet its standards under the code.
- Mr M goes on to say had he been given appropriate warnings he would have had the opportunity to reconsider the payment and investigate the legitimacy of the investment further. He concludes that because of NatWest's lack of intervention, it should be fully responsible for his losses.
- Mr M goes on to comment on the investigators findings about whether he had a reasonable basis of belief, when making the payments. He said although the returns promised were high his trust was based on:
 - o The recommendation to invest came from a close friend which had reportedly withdrawn funds successfully.
 - o He was provided with an investment management agreement which appeared legitimate.
 - o He received monthly updates via a spreadsheet.
 - o He says its unreasonable for him, as an ordinary person, to have identified the red flags that have come to light, following our thorough investigation.
- Mr M believes NatWest hasn't shown that it attempted to recover his funds following the reporting of the scam.

NatWest also didn't accept the investigators findings. It asked how a conclusion had been made that T's actions were in fact fraud. It said there was an on-going criminal investigation and the accused parties right to be assumed innocent means the test under the code cannot be met at this stage. NatWest also went on to say it believes this and other claims relating to T should be placed on hold under R3(1)(c) of the CRM code.

As the parties could not agree the matter has been passed to me to consider 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.

Having done so, I agree with the investigators' findings for largely the same reasons. I'll explain why.

NatWest's request for the case to be placed on hold

In order for the consumer to have been the victim of an APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. '*fraud*' in this instance would mean that there had been a dishonestly made false representation, with the intention of making a gain for T or to cause a loss to Mr M.

And for there to be '*fraudulent purposes*' (as opposed to legitimate purposes) would require that test for fraud to be met in relation to the *purposes* for which the payment was procured. That must have been at the time the payment transaction occurred or earlier. It does not follow that fraud at a later date can engage the CRM Code's definition of an APP scam. Neither would fraud which doesn't speak to the *purpose* of the payment. I take it to follow that there may be situations where false representations were made which could amount to fraud under the Fraud Act, but which don't have the effect of the payment falling within the scope of the definition of APP Scam set out under the CRM Code.

I don't have the power to conduct a criminal investigation into T. Part of what is required here is to establish the intent and state of mind of the person(s) accused of this fraud about the purpose of Mr M's payment.

When considering the evidence produced in support of Mr M's claim of an APP scam, I'm required to reach my findings on a balance of probabilities rather than to the criminal standard. But given the serious nature of the allegations involved I consider that this must involve convincing evidence to lead me to find it more likely than not the underlying purpose of the payment transaction was a fraudulent purpose.

I have not seen any evidence at all to suggest any trading took place with the funds that Mr M transferred to T's account. We've also seen a number of receiving account statements and there's no activity that would suggest T was operating or carrying out the activities as he described, or the consumer's funds were fundamentally being utilised, as agreed between T and the consumer. So on balance I'm satisfied there is enough persuasive evidence that Mr M, as well as others, have been the victims of an APP scam.

NatWest has said there is an on-going Police investigation and R3(1)(c) of the CRM code applies. R3(1)(c) says:

If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.

NatWest hasn't provided an explanation as to why awaiting the outcome of the police or other statutory body investigation *might reasonably inform* an outcome under the CRM code. A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if NatWest, under the voluntary CRM code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I

appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in this particular instance. A criminal prosecution is not necessary to determine if something is an APP scam under the code. I'm satisfied on balance that this was more likely than not a scam. I've seen no evidence that T intended to use the consumers funds as they agreed between them. And NatWest has not provided any evidence to contradict this either. As such I'm satisfied this meets the definition of an APP scam under the CRM code.

Has NatWest met the firms' standards under the CRM code?

NatWest can't provide the call recordings or any records of what was discussed at the time Mr M made payments two, three and four. Its therefore not clear if Mr M was asked about the payment purpose or if any warnings were given.

Like the investigator I'm satisfied that by the second payment NatWest ought to have identified the payments being made represented an APP scam risk and provided a tailored risk-based warning.

And so, I agree with the investigator that NatWest has not been able to produce any evidence that it provided effective warnings in line with its requirement to do so under the CRM code.

Mr M goes on to say had he been given appropriate warnings, he would have had the opportunity to reconsider the payment and investigate the legitimacy of the investment further. He concludes that because of NatWest's lack of intervention it should be fully responsible for his losses. But I don't agree. NatWest isn't required to provide a full refund under the CRM code if the consumer didn't have a reasonable basis of belief when making the payments. I'll go on to explain my findings on this below. But in summary NatWest's liability is limited to 50% of Mr M's losses (from the point of the second payment onwards). NatWest's failure to provide warnings does not automatically warrant it becoming liable for all of Mr M's losses under the CRM code.

Did Mr M have a reasonable basis of belief when making these payments?

I haven't seen any persuasive evidence from Mr M that he thought this was a legitimate investment. He appears to have decided to invest based on very little information.

- Mr M says a close friend invested and received returns but has provided no evidence to support this. Either that this individual was his friend or that this friend did in fact receive funds (and not just told he'd made a profit from the monthly spreadsheet statements that we know most consumers received).
- Mr M has provided a basic agreement between him and T which says he will give T money and in return T will invest his funds in forex and provide the profits as described in the background of this complaint. And like the investigator I agree that the high guaranteed returns, with no risk to his capital should have been a red flag for Mr M.
- Mr M says he was told T was an experienced trader and had been doing so for over 5 years. Mr M hasn't said if he was told this directly by T or not. But Mr M hasn't said that he questioned this or saw any evidence that substantiated this claim. Given T's age at the time (23) if Mr M was told this I would have expected him to have asked more about this, given the young age T would have needed to start trading for the years of experience he claimed to have.
- The payments were being made to T's personal account rather than to a business or

Ltd company account. It's not clear how Mr M thought he would receive his returns or if they were held in any sort of client account – I can't see that he asked these questions or thought about this when sending this money to T.

- If Mr M had made enquiries with T he would have found that in order to carry on the activity that T claimed to be doing, trading or investing on behalf of others, he required FCA authorisation, which he didn't have.
- T doesn't appear to have provided detail about how he would be able to generate such lucrative profits without any risk. And Mr M hasn't provided evidence or explained that he asked about this either.
- And although Mr M has said he received the monthly statements showing his profits, these were very basic spreadsheets which don't provide any indication of what is happening to generate those "returns". In any event this wouldn't have had any bearing on Mr M's initial decision to invest as these would have only been sent to him after he began to invest. But if he saw this spreadsheet from his friend or from someone else, at the point he was deciding to invest, and they were an influencing factor, then I'm not sure what it was about these spreadsheets that Mr M found persuasive or that made him think the investment was legitimate, given their sparse detail and basic format.
- Mr M says he was also provided with screenshots of the trades placed by T with his profits but again hasn't provided evidence of this. But, in any event, I don't think this has any bearing on his reasonable basis of belief when he made the initial payments to T – as these would have been received after Mr M had begun investing with T, or at least after his initial payment.

Whilst I appreciate Mr M wasn't the only consumer who fell for this scam, I haven't seen any persuasive evidence that Mr M reasonably thought this was a legitimate opportunity given all the red flags that it presented.

I'm afraid I agree that he should be held partly liable for his losses and agree that the refund amount here due from NatWest is limited to 50% from the second payment onwards plus 8% interest.

Putting things right

I now direct NatWest to

- pay Mr M 50% of his losses from the second payment onwards.
- Plus pay 8% simple interest from the date the claim was declined to the date of settlement.

My final decision

I uphold Mr M's complaint in part, against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 March 2025.

Sophia Smith
Ombudsman