

The complaint

Mrs R complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ("NatWest") won't refund payments she made as part of a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

Between August 2019 and October 2020 Mrs R made payments towards art investments. It was explained to Mrs R that the art investment company, Company A, would buy and store the artwork on her behalf before selling the art for a profit at a later date.

Then, in 2023, Company A went into liquidation. Mrs R subsequently raised a complaint with NatWest as she felt she'd been the victim of a scam.

NatWest investigated the matter and, based on the information available, were unable to see whether or not they did intervene to prevent and loss or financial harm caused to Mrs R, so declined to offer any reimbursement on that basis. Unhappy with this response, Mrs R referred her complaint to our service via a professional representative.

An investigator looked into Mrs R's complaint but did not uphold it. They felt that, based on the evidence available, there wasn't enough to demonstrate that Company A had set out to defraud Mrs R at the time of her investments.

Mrs R disagreed with the investigator's findings and provided further evidence and commentary as to why she believed she was the victim of a scam. These further submissions were considered by the investigator, but they maintained their position that this complaint shouldn't be upheld in favour of Mrs R.

As the complaint couldn't be resolved by the investigator it has been passed to me for a 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.

Firstly, I'd like to say how sorry I am to see the impact this situation has had on Mrs R. This has unquestionably, and understandably, had a substantial effect on her.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a bank such as NatWest is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Here it's not in dispute that the payments were authorised, so the starting position is that NatWest isn't liable for the transactions.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

NatWest also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these things into account, I need to decide whether NatWest acted fairly and reasonably in its dealings with Mrs R.

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

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *"another person for what they believed were legitimate purposes but which were in fact fraudulent."*

The Code also explains that it 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'*.

In order to reach my decision on this complaint, I've considered the purpose for which Mrs R made, and Company A received, the payments. And, if there is a significant difference in these purposes, whether I can be satisfied that this difference was as a result of dishonest deception.

It's clear that Mrs R made the payments in order to purchase artwork which would be later sold at a profit. I've not been made aware that Mrs R's artwork did not exist or that it wasn't being stored on her behalf. So, to that extent, I'm satisfied that the purpose Mrs R and Company A had in mind for the payments were broadly in line.

But, importantly in this case, Mrs R's dispute doesn't appear to stem from whether the artwork existed. Instead, Mrs R claims that this investment opportunity was in fact fraudulent and that Company A and its connected parties sought to unjustly enrich themselves.

In order to demonstrate this position, Mrs R has provided numerous pieces of evidence including, but not limited to, a judgment handed down in relation to the freezing of Company A's accounts and the alleged scam, as well as numerous affidavits, some of which were submitted to the court for their consideration in the case.

So, I've gone on to consider whether any of the wider circumstances surrounding Company A and Mrs R's investments demonstrate that the investments were fraudulent and whether Mrs R is the victim of an APP scam.

In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mrs R's complaint. This is not meant to be a discourtesy to Mrs R and I want to assure her I have considered everything she has submitted carefully.

Liquidator's comments

Mrs R points to comments made by the liquidator who had reviewed the conduct of Company A as evidence of them acting fraudulently. Specifically, Mrs R references the liquidator's comments within their affidavit submitted to the court confirming their belief that Company A was trading fraudulently, received proceeds of fraud and that they'd breached their fiduciary duty to its investors.

Importantly, though, the liquidator also comments that there could be legitimate reasons and explanations as to Company A's actions in relation to the concerns they raised. Given the case didn't go to trial, we've no confirmation directly from Company A as to the reasons behind their actions. And, as per the liquidator's comments, Company A may have sought to argue that their actions were not fraudulent or done with the intention of defrauding their investors.

I've also considered that Company A agreed to settle matters outside of court, but that this was done without the admission of any guilt or liability. This means that, as far as I'm aware, Company A hasn't accepted that it acted fraudulently or had intended to defraud its investors. Ultimately, this agreement remains confidential and so I don't think it would be fair to draw any conclusion as to whether Company A chose to settle matters outside of court because of any guilt on its part.

The valuation of the artwork

Mrs R asserts that the valuation of the artwork purchased from Company A was grossly inflated, meaning that any potential for future profits was highly unlikely.

However, the evidence available appears to show that there is some difference of opinion when considering the value of some of the art purchased by Company A's investors.

On one hand, the liquidator comments that the value of the art was inflated to such an extent by Company A and that it was, in fact, largely worthless. On the other hand, there is testimony from some of the artists confirming that, while their art is overvalued, it is not so significantly overvalued that it could be said to have been priced fraudulently.

Furthermore, I have to consider the judge's comments that the valuation of the art is something that would need to be determined in a court.

The value of art is subjective and that there is likely to be a difference of opinion when it comes to the valuation of any artwork and it isn't uncommon for artwork to be overvalued in some way, albeit not to the extent that it was valued by Company A.

So, while I accept that the mark-up in value by Company A may be higher than what is generally seen across the industry, I'm not persuaded that the valuation of the artwork by Company A is enough to demonstrate it was acting fraudulently.

The secondary market for the sale of artwork

Company A often bought back their own artwork from investors at a value higher than originally paid by investors. Mrs R alleges that this practice was carried out in order to give the illusion that a secondary market did exist for the artwork and that the investment scheme was operating in the manner originally prescribed.

I accept that the judge's comments and evidence submitted to the court raise questions regarding the conduct of Company A with regards to this practice. I also accept that this may well support a claim for the misrepresentation of Company A and its operations. But, it's clear from later comments made by the judge that any such fraudulent activity would need to be considered in a trial; and that it wasn't within the remit of the hearing to make a finding in relation to this.

While I accept that the judge found there to be a good arguable case for fraud having occurred, this test is not the same as the test which is applied in order to demonstrate that Mrs R has been the victim of an APP scam.

In order for a freezing order to be granted, the threshold for a good arguable case is required to be met. The judge makes it clear in their findings that the threshold for a good arguable case is lower than 50%.

In order for me to be satisfied that Mrs R has fallen victim to an APP scam, I need to be satisfied that, on the balance of probabilities, it is more likely than not that Company A had intentionally set out to defraud her from the outset. And, as demonstrated above, the judge's comments do not extend to making a finding that it is more likely than not that Company A had committed fraud in relation to this matter. Instead, the judge confirmed this would be a matter for trial.

Other considerations

As referenced earlier in my decision, NatWest has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. That said, NatWest has no obligation to protect its customers from civil disputes.

As I don't believe Mrs R is the victim of an APP scam, and that this is a civil matter between Mrs R and Company A, I'm satisfied that NatWest haven't failed in any of their obligations by not providing any warnings to Mrs R or discussing the payments prior to their release.

Furthermore, even if NatWest had discussed the payments with Mrs R, I don't think they ought to have identified that she may be at risk of fraud or financial harm as there didn't appear to be any concerns about Company A's legitimacy at the time of the payments.

The CRM Code requires businesses to refund victims of APP scams if they are considered vulnerable at the time of the payments. Whilst I have every sympathy for the health issues Mrs R has experienced, as I don't believe she is the victim of an APP scam, I can't fairly ask NatWest to reimburse her based on any vulnerability she has experienced.

Conclusions

Based on all the evidence available, I'm unable to agree that, on the balance of probabilities, Company A set out with the intention of defrauding Mrs R at the time she made the payments for her investments.

I accept that some of the actions of Company A may be of genuine concern, but these don't satisfactorily demonstrate to me that its intention was to defraud Mrs R at the time she made

the payments in question. Because of this, I don't think it would be fair to request NatWest to reimburse Mrs R's loss.

My final decision

My final decision is that I do not uphold this complaint against NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 26 September 2025.

Billy Wyatt
Ombudsman