

The complaint

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

What happened

In 2022, Mr R was made aware of an investment opportunity by a professional introducer. Mr R says he previously used this introducer for two prior investments.

Mr R received marketing material and brochures about a property development being done by a company I'll refer to as D. D's brochure said they were building an apartment complex, they'd sold 184 of 217 apartments off the plan, and were raising funds. D offered fixed rate secured loan notes to potential investors.

Mr R signed up for a loan note of £10,000 that promised a 1% per month return for a 12 month period. Mr R made the payment from his NatWest account on 14 April 2022.

Mr R received monthly returns of £100 between August 2022 and November 2023. In December 2022 he received a reduced return of £40 and in January 2023 received a return of £80. In total Mr R received £720 in returns.

Ultimately, D entered into insolvency in August 2023 and Mr R didn't receive any further returns or his capital back.

Mr R believes he's been the victim of an investment scam. So, through a professional representative, he raised a fraud claim with NatWest in August 2023.

NatWest declined to refund Mr R saying they acted in accordance with their legal and regulatory obligations. NatWest said D was a genuine company.

Mr R wasn't happy with NatWest's response, so he brought a complaint to our service.

An investigator looked into Mr R's complaint but didn't recommend that NatWest refund him. The investigator wasn't satisfied that the investment was a scam.

Mr R disagreed with the investigator's opinion and raised the following points:

- There was fraud by false representation as D didn't own the property they were offering the loan notes on and they didn't have planning permission.
- There are no charges registered at Companies House by the security trustee.
- A creditor petitioned the court for the winding up of D in June 2023, which was granted in August 2023.
- As D didn't purchase the site, it's unclear what the investors' funds were used for.
- Another bank has fully refunded another investor after making the finding that it was a scam not a civil dispute.

- We can't reach an answer on the case without knowing what happened to the investors' funds.

As the case couldn't be resolved informally, it has been passed to me to review.

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 really sorry to disappoint Mr R, but having carefully considered all the evidence, I've reached the same answer as the investigator. I'll explain why.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've 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.

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).

Is Mr R entitled to a refund under the CRM Code?

NatWest are a signatory of the CRM Code. The CRM Code 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 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 R made the payment, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr R thought this purpose was legitimate.
- The purpose the recipient (D) had in mind at the time of the payment and whether this was broadly in line with what Mr R 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 R was making the payment for a loan note in relation to a property development. I haven't seen anything that would suggest that Mr R didn't think this was legitimate.

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

In reaching an answer on what purpose D had in mind, I've considered the wider circumstances surrounding D, its director (Z), and any linked businesses. The key information to this case is:

- Z has cut off all communication with investors and doesn't appear to be co-operating with the insolvency service or police which is concerning, but there is a lack of evidence to show what happened with the funds. Not knowing where the funds have gone doesn't mean they have been stolen or misappropriated, just that we don't have

clear evidence to show what they were used for. This also means we don't have evidence to show that Mr R's funds weren't used for their intended purpose.

- D had previously completed on another property development in October 2019, although I understand that it fell into financial difficulty as a result of the pandemic. It's possible that D has faced financial difficulties or there has been mismanagement. But a failed firm or investment, in and of itself, isn't sufficient to establish that the business, or those operating it, had a different purpose for the funds when they were obtained from the consumer.
- Mr R says there was false representations by D in relation to ownership of the land. However, there was planning permission on the land, albeit we don't know who that planning permission was for. Also, the paperwork I've seen relating to the property investment doesn't say that D owned the land.
- I understand that there have been allegations that D were operating a Ponzi scheme, but I haven't seen any evidence to support this.
- We've received third party information from the receiving bank, which I can't disclose due to data protection laws. However, that information doesn't allow me to safely conclude that the funds weren't used for their intended purpose.
- I'm aware there is a police investigation into the activities of D and its directors. But there isn't any evidence from that investigation, which supports that the money taken by D wasn't used for its intended purpose.

The onus is on Mr R to prove his claim that his funds weren't used for their intended purpose. And, taking all of the above points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say Mr R's funds weren't used in the manner agreed by D or that the purpose D had in mind was different to Mr R's.

On that basis, I'm not satisfied that I can say Mr R's payment meets the definition of an APP scam as set out in the CRM Code, and I can't fairly ask NatWest to refund him under the CRM Code.

Is there any other reason I could hold NatWest liable for Mr R's loss?

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider NatWest should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect NatWest to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment. Mr R made his payment through telephone banking with the assistance of NatWest bank staff.

The first time Mr R called to make the payment, NatWest had some concerns and asked Mr R questions about the investment. They asked how he had found the investment, whether he'd checked the Financial Conduct Authority's website to see if the company was regulated for investments and whether he'd been to the site to see the development. Mr R explained why it wasn't viable for him to visit the development site and why he was satisfied it was a genuine investment. The NatWest advisor then asked if Mr R had completed his own independent research into the investment. When Mr R said he hadn't, the advisor said they had concerns about making the payment.

Mr R was clearly unhappy with NatWest's assertion that it might not be a genuine investment and asked if he could reduce the payment amount to get it through. When the advisor said no, Mr R said he would just move money to another account if they wouldn't make the payment. The NatWest advisor was telling Mr R why they wanted him to complete his own research when Mr R abruptly ended the call.

Mr R called back later to attempt the payment again. In the second call, the NatWest advisor asked Mr R some questions about the payment but doesn't appear to have picked up on Mr R's earlier call attempting to make the same payment. I think it would've been reasonable for NatWest to have asked Mr R if he had done some independent research into D as discussed earlier, but I think it's more likely than not he would've said he had.

It's also worth noting at the time Mr R made his payment, D was a UK incorporated company which had previously completed a property development. Mr R received professional documentation and marketing material and there wasn't any information available in April 2022 to suggest D wasn't operating legitimately.

So, if Mr R completed research, as recommended by NatWest, it's unlikely he would've found any information that would've concerned him. And, I'm not satisfied that NatWest would've had reasonable grounds on which to refuse to make Mr R's payment the second time he called.

Also, I think it's more likely than not, if NatWest had refused to make the payment the second time Mr R called, he would've found another way of making the payment. As, he'd already told NatWest that he would move money to another account or reduce the payment amount to get it through.

On that basis, I'm not satisfied that I can fairly say NatWest could've prevented Mr R's loss or can fairly be held liable for the loss.

Mr R has provided evidence of another bank fully refunding their customer after determining that their payments to D were made as the result of a scam. But I have to reach an answer based on the circumstances of Mr R's complaint and whether I'm satisfied based on the evidence that NatWest can fairly be held liable for Mr R's loss. Another bank reaching a decision to refund their customer doesn't mean that NatWest are required to refund Mr R.

I'd like to add that if material new information comes to light at a later date, as a result of the ongoing investigations, Mr R can ask NatWest to reconsider his claim.

I'm really sorry to disappoint Mr R, but I'm not satisfied that I can fairly hold NatWest liable for his loss or ask them to refund him.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 April 2025.

Lisa Lowe
Ombudsman