

The complaint

Mr P complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ('NatWest') hasn't reimbursed the money he says he's lost to a scam.

What happened

Mr P says he's fallen victim to an investment scam.

He became interested in investing with a company which I'll refer to as 'V' after learning that his close friend had invested money with the company and made good returns. He researched the Financial Conduct Authority ('FCA') regulated individual marketing V ('the marketer'), and attended an online seminar ran by them. He also met the founders of V in-person. During those online and in-person events, Mr P:

- Was told that V was regulated by the Commission de Surveillance du Secteur Financier ('CSSF') in Luxembourg and going through the process of getting a licence in the UK from the FCA.
- Asked questions about V's investment structure and was given details of the company V was using to create its Special Limited Partnership ('SLP'). He subsequently contacted that company and spoke to its director, who confirmed having dealings with V.
- Received assurance that his investment would generate monthly returns of around 10% - this was in line with the returns he'd seen generated for his friend via their investment portal.
- Questioned the requirement of sending investor money to personal accounts – he was told that V's founders had only previously invested on behalf of friends and family and, as the company was new, it was still in the process of setting up a bank account. He found this explanation to be plausible and, as his friend had seen his funds credit his account with V after they were sent to personal accounts, as expected, he had no concerns.

Mr P has explained that he wasn't worried that V was an unregistered business due to its regulatory status. He reviewed V's professional and high-quality literature and website then decided to open an account. During the account opening process, he was taken through 'Know Your Customer' ('KYC') checks and, on 31 October 2022, he paid £20,000 to V from his NatWest account.

Mr P was given access to a fake trading portal. However, he hasn't been able to withdraw any profits, and V is now being investigated by the FCA.

Mr P raised a scam claim with NatWest in September 2023. He asked the bank to reimburse him under the provisions of the Lending Standards Board's Contingent Reimbursement Model ('CRM Code'). He said that NatWest's systems failed to pick up on out of character transactions that were indicative of fraud and, had the bank made an appropriate

intervention, the fraud would've been prevented.

NatWest said that Mr P didn't have a reasonable basis for belief when he made the disputed payment, so he's not entitled to reimbursement under the CRM Code. Referring to the FCA's investigation, it said it's not currently clear whether V was operating a scam or offering a genuine investment opportunity that's failed, so it wouldn't look to review its decision not to reimburse Mr P under the terms of the CRM Code until external investigations are complete.

Mr P brought a complaint to this Service against NatWest. He said it is clear that V was operating a scam because:

- There are numerous regulator warnings about V – including from the FCA – for unauthorised activity.
- No returns were paid.
- V was unlicensed and victims were lied to about its regulatory status and being sponsored for an FCA licence.
- V took money into personal accounts.
- There is no evidence of actual trading.
- V never filed any accounts.
- The standard pattern of the most common investment scams is present here, namely, money was taken into an account not clearly linked to V before appearing as deposits in an MT5 enabled account – customers were then shown consistent and impressive returns to encourage them to invest more.

Mr P asked this Service to consider instructing NatWest to reimburse his financial loss.

What did our investigator say?

Our investigator was satisfied that Mr P's situation meets the CRM Code definition of an Authorised Push Payment ('APP') scam, and that the FCA's investigation of V would have no impact on this. So, she assessed the case under the provisions of the CRM Code and found that NatWest should fully reimburse Mr P and pay interest at a rate of 8% per annum from the date of her view to the date of settlement.

Mr P accepted our investigator's findings, but NatWest did not. In summary, the bank said that, until the outcome of external investigations is received, it can't be concluded that V set out to defraud Mr P.

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.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that an FCA investigation into V is still ongoing.

There may be circumstances and cases where it's appropriate to await the outcome of

external investigations. But it may also be possible to reach conclusions on the main issues based on the evidence already available.

In order to determine Mr P's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that he's been the victim of a scam here. I wouldn't proceed to that determination if I considered that fairness to the parties demands that I delay. But I need to bear in mind that this Service exists for the purpose of resolving complaints quickly and with minimum formality, so delaying giving Mr P an answer for an unspecified length of time would be inappropriate unless truly justified. As a general rule, I wouldn't be inclined to think it fair to postpone reaching a decision unless, considering the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the main issues.

For the reasons I will set out in full below, I don't think it's necessary to await the outcome of the FCA's investigation into V in order to reach a fair outcome in this case.

I'm aware that my decision not to postpone determining this case might lead to 'double recovery'. I think that NatWest would be entitled to take, if it so wishes, an assignment of the rights to all future distributions to Mr P in respect of this investment before paying any redress I award.

Has Mr P been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Mr P 'authorised' the disputed payment. Because of this, the starting position is that he's liable for the transaction. But NatWest was signed up to the CRM Code, and it was in force when the disputed payment was made. And the CRM Code provides additional protection to APP scam victims, as Mr P claims to be.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an APP scam. But the CRM Code only applies if the definition of an APP scam, as it sets out, is met. I have included the CRM Code's definition of an APP scam below:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. It says:

This Code does not apply to:

- b) 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.*

I've therefore considered whether the payments Mr P made to V fall under the scope of an APP scam as set out above, and I think they do. I'll explain why.

Our Service is now aware of a number of issues related to V, which suggest it was more than likely operating a scam. For example:

- V's claims of at least being in the process of becoming regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- There is no evidence to substantiate V's claims around the profits it was able to generate via Forex trading.
- Less than half of investor's funds sent to the founders of V were potentially used for the intended purpose of Forex trading, and I understand that investors sent funds in the belief that they would immediately be moved to a trading account to be used in Forex trading.
- V's account provider has shown that, when V applied for accounts, it lied at least twice – about partnering with a trading exchange and its regulatory status.
- None of the funds sent to V's business accounts were used for the intended purpose of trading in Forex.

Considering all of the above, I do not think V was using investor funds, such as Mr P's £20,000, for the purpose they were intended for. And I think this difference in purpose is down to dishonest deception on V's part. It follows that I'm satisfied this complaint meets the definition of an APP scam as set out in the CRM Code.

Returning to the question of whether, in fairness, I should delay reaching a decision in this case pending developments from external investigations, I have explained why I should only postpone my decision if I take the view that fairness to the parties demands that I should do so. In light of the evidence already available to me here, I do not consider it likely that postponing my decision would help significantly in deciding the main issues. In regards to the FCA's investigation of V, there is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on the evidence and issues I've discussed.

Is Mr P entitled to reimbursement under the CRM Code?

I've considered whether NatWest should refund Mr P under the provisions of the CRM Code. Two exceptions to full reimbursement could apply in this case, if:

- Mr P ignored an effective warning that NatWest gave during the payment journey: and/or
- Mr P made the disputed payment without a reasonable basis for belief that the payee was the person he was expecting to pay, the payment was for genuine goods or services and/or the person or business he was transacting with was legitimate.

NatWest hasn't argued that it gave Mr P an effective warning during the payment journey, and I can't see that it gave a warning from the available evidence. So, that exception to reimbursement is not applicable here.

From what I've seen, I'm persuaded that Mr P had a reasonable basis for belief in this case, so I'm not satisfied that this exception to reimbursement applies either. He:

- Invested with V after observing the successful performance of his friend's investment.
- Researched the marketer and was aware that they were FCA-regulated.

- Attended an online webinar run by the marketer, along with other potential investors.
- Met the founders of V in-person.
- Asked questions about V's investment structure and contacted the company V was using to create its SLP to verify the information he was given.
- Received assurance that his investment would generate monthly returns of around 10% - this was in line with the returns he'd seen generated for his friend via their investment portal.
- Questioned the requirement of sending investor money to personal accounts and received an explanation he found to be plausible. He'd also seen that his friend's money had credited their account with V after being sent to a personal account and was reasonably reassured by this.
- Reviewed V's professional website and high-quality marketing material.
- Was reasonably reassured about V's lack of presence on Companies House.
- Was taken through KYC checks during the account opening process, as would be expected with a legitimate business.
- Was given access to a fake trading portal and saw his money appear in his account with V as expected.

Overall, I think there was enough to reasonably convince Mr P that this was a genuine investment with a legitimate business.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint and instruct NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY to reimburse Mr P in full. It should also apply 8% simple interest per annum from the date of our investigator's view (16 January 2025) to the date of settlement. I say this because the information I've relied upon to uphold Mr P's complaint was not readily available to NatWest when the scam claim was first raised. So, the bank would not have been able to identify the issues that led to the complaint being upheld by me.

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

Kyley Hanson
Ombudsman