

The complaint

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

What happened

Mr H says that he heard about the opportunity to invest in a start-up company I'll refer to as S in a telephone call. The investment involved buying shares in S through a firm of accountants I will call C. Mr H was told that he would be able to claim 30% back from HMRC under the Enterprise Investment Scheme ('EIS') and a return on his investment.

In March 2021 Mr H paid £4,500 to C for shares in S. Mr H received £1,352 from HMRC (although he believes he will have to return these funds because he believes they relate to fraud) but nothing further.

Mr H says he realised he paid funds to C as a result of a scam when the police visited him and explained they were investigating C and S. He didn't report a scam to NatWest but instructed a legal representative to send a letter of complaint in March 2023.

NatWest said it had no evidence that Mr H raised a scam claim with it, so it hadn't had the opportunity to investigate. NatWest also said it provided appropriate warnings when the payment was made.

Mr H was unhappy with NatWest's response and brought a complaint to this service. He said he should be reimbursed under the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code').

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said there was insufficient evidence to conclude that C was operating fraudulently so she couldn't consider Mr H's complaint under the CRM Code. She noted that at the time Mr H made the payment, C was FCA registered, Mr H received genuine looking documentation, and he also received a tax refund from HMRC and there is an ongoing police investigation. The investigator also didn't think NatWest acted unreasonably in processing the payment.

Mr H didn't agree with the investigator's findings. His response was lengthy, so I have summarised what I consider to be his main points:

- There is no evidence to show that C used Mr H's funds for the intended purpose – to invest in a start-up company via the purchase of 4,500 shares in S, facilitated by C as a broker.
- S no longer appears to be operating as a functional business and has no online presence. There is also no online evidence that the products it claimed to have created have ever been commercially available.
- Mr H was contacted by the police in February 2023 which he says is strong evidence the police had identified his transfer as fraudulent. He was told they were investigating C and S and that his funds weren't used to buy shares. Instead, Mr H's funds were used for personal expenditure.
- There is an ongoing police investigation, and a suspect has been arrested and

charged, and over 30 people have been interviewed. This investigation will take a long time and it's unfair to leave victims waiting until it is completed.

- Some banks have already reimbursed customers and the police have confirmed they are communicating with this service so it's unclear why Mr H hasn't received a refund.
- C was only the appointed representative of an insurance broking company from February to May 2021, demonstrating its behaviour may not have complied with FCA regulations. And the sale of shares has no relevance to insurance.
- C's documentation said it was waiving fees, which Mr H says is evidence C was a hook to get people to buy shares in S.
- S is subject to a compulsory strike-off which suggests it wasn't operating legitimately. It also filed identical accounts in 2021 and 2022, suggesting activity ceased in 2021 and something was amiss.
- Claims made in updates which presented S as a thriving start up with multiple employees weren't backed up by accounts which said there was only one employee.
- The fact HMRC provided a tax return merely demonstrates it was duped as well. Mr H provided a link to an article which says the EIS scheme has been the subject of widespread abuse.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mr H's claim falls within the scope of the CRM Code, which defines an APP scam as:

...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.*

It is for Mr H to demonstrate that he is the victim of an APP scam.

To decide whether Mr H is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payment and whether Mr H thought this purpose was legitimate.
- The purpose the recipient (C) had in mind at the time of the payment, and whether this broadly aligned with what Mr H understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr H thought he was buying shares in a start-up company and benefiting from EIS. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

The available evidence doesn't lead me to believe that it's more likely than not that C and S had a different purpose in mind at the time Mr H made the payment to C.

It is currently unclear what Mr H's funds were used for. I am aware of the ongoing police investigation and have seen the updates the police have provided, including the latest one in November 2024. The update referred to multiple companies that are being investigated (including C and S), to "over 1,000 victims affected by this fraud", and to a suspect being on bail. But the police investigation is ongoing. Tens of thousands of financial transactions are still under review and a considerable amount of material is still being considered. And the update doesn't shed any light on whether Mr H's funds have been used for the intended purpose.

Mr H considers the fact the police approached him indicates they have traced his payment and consider it to relate to fraud, but I don't agree. The November 2024 update states that the police are committed to obtaining an account from the 1,000 people involved and to getting statements from a representative proportion of them. And although Mr H says the police told him that his funds weren't used to buy shares, they haven't communicated that to this service.

At the time Mr H made the payment to C, C was registered with the FCA as an appointed representative of a firm that had the word 'insurance' in its title. This firm had FCA authorisation in respect of some insurance activities, as well as "Arranging (bringing about) deals in investments", "Dealing in investments as agent", and "Making arrangements with a view to transactions in investments".

Mr H's representative has made assumptions and drawn adverse conclusions when responding to the investigator's view. Whilst there may have been misrepresentation and poor business practices, I don't consider these factors go far enough to bring Mr H's claim within the scope of the CRM Code.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose C (and S) had in mind when taking the payment from Mr H was different to his.

If material new evidence comes to light at a later date Mr H can ask NatWest to reconsider his fraud claim.

I've gone on to think about whether NatWest should be held responsible for Mr H's loss for any other reason. In broad terms, the starting position at law is that a financial institution 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.

Taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, NatWest should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) though. And, in some circumstances, irrespective of the payment channel used, have

taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

In this case I don't consider the transaction was so unusual and out of character given the usual operation of Mr H's account that NatWest ought reasonably to have recognised a risk of harm and taken additional steps. Whilst the transaction was of a higher value than other transactions on the account, it was still for a relatively small amount. And there's a balance to be struck between NatWest identifying concerning payments and responding appropriately to any concerns, and minimising disruption to legitimate payment journeys.

In any event, even if I thought the transaction was unusual and NatWest had intervened, I don't think there would have been any concern about it given what was known about C and S at the time. There was nothing adverse about C in the public domain and the documentation provided to Mr H looked legitimate.

Mr H's representative has pointed out that some investors have been reimbursed by their banks. This is a decision other banks are entitled to make but doesn't mean that I must require NatWest to reimburse Mr H.

I'm really sorry to disappoint Mr H, but I'm not satisfied that I can fairly ask NatWest to refund him based on the evidence that is currently available.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 April 2025.

Jay Hadfield
Ombudsman