

The complaint

Mr P complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY (“NatWest”) did not reimburse the £10,000 he lost to a scam.

What happened

Mr P and his father heard through various friends and family about an investment opportunity with a company I’ll refer to as ‘V’. They received brochures and spoke with other investors who had already withdrawn returns and appeared to be having success with their investments. After checking the company website and looking them up online, Mr P decided to invest in V and transferred £10,000 to one of the founders on 25 October 2022.

After a few months, Mr P heard other investors were having difficulty in withdrawing their funds, and he made a request for a withdrawal himself. He was told by V that the FCA had halted all withdrawal processes and following that, he never received a return of his funds.

Eventually, Mr P raised a scam claim with NatWest. They issued a final response letter in February 2024 in which they explained they felt this was a high-risk investment and therefore a civil dispute between Mr P and V. So, they did not agree to refund him in the circumstances.

Mr P referred his complaint to our service and our Investigator looked into it. Having reviewed the complaint, they felt it was more likely V was operating as a scam and this was based on a number of factors. They therefore assessed the complaint under the Lending Standards Board’s Contingent Reimbursement Model (“CRM”) Code. They felt that Mr P had a reasonable basis for believing the investment was genuine, so they did not think an exception to reimbursement applied. They therefore recommended a full refund of the £10,000 payment, as well as 8% simple interest from the date of the transaction to the date of settlement.

Mr P accepted the findings, however NatWest did not. They felt the complaint should be held under R3(1)(c) of the CRM Code, as there was an ongoing investigation being carried out by the Financial Conduct Authority (“FCA”). They therefore felt our service should wait until the investigation being carried out by an official body was concluded.

As an informal agreement could not be reached, the complaint has been passed to me 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.

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 the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

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 was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mr P first raised his claim with NatWest in January 2024 and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr P an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes might result in some recoveries for V's investors; in order to avoid the risk of double recovery, I think NatWest would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr P under those processes in respect of this investment before paying anything I might award to them on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the FCA's investigation for me fairly to reach a decision on whether NatWest should reimburse Mr P under the provisions of the CRM Code.

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 payment of £10,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transaction. But he says that he has been the victim of an authorised push payment (APP) scam.

NatWest has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out 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. The wording in the code is as follows:

"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 payment Mr P made to V falls under the scope of an APP scam as set out above. Having done so, I think that it does. I'll explain why in more detail.

Our service is now aware of a number of issues related to V, which suggest to us it is more likely they were carrying out a scam. I'll explain why in more detail.

- We are now aware that V's claims of being at least in the process of being 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 they say they were able to generate via Forex trading.
- Less than half of the funds sent to the two founders was potentially used for the intended purpose of Forex trading. Whereas Mr P sent funds to V with the understanding 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, this was about partnering with a trading exchange and that it was regulated.
- We have also seen evidence that none of the funds sent to V's business accounts was 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 £10,000, 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 think this complaint meets the definition of an APP scam as set out in the CRM Code above.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. In regard to the FCA's investigations, 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 evidence and issues I've discussed.

Is Mr P entitled to reimbursement under the CRM Code?

I've first considered whether NatWest should refund Mr P under the provisions of the CRM Code. There are generally two exceptions to reimbursement:

- Mr P ignored an 'Effective Warning'
- Mr P made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.

NatWest has set out that they did not provide a warning for the payment of £10,000, as it did not flag on their fraud detection systems. I have reviewed Mr P's statements for the 12 months prior to the £10,000 payment. Having done so, I can see the majority of his day-to-day account usage is for lower value amounts of up to a few hundred pounds. There were two payments of around £2,00 in the three months prior to the scam, but these appear to be one-offs. I therefore think the payment of £10,000 which was of a significantly higher value and was going to a new payee should have been seen as potentially an APP scam that warranted an effective warning by NatWest. As they did not provide one, I do not think it can

be said Mr P ignored an effective warning, so there is no exception to full reimbursement in relation to this point.

I have also considered whether Mr P had a reasonable basis to believe V was legitimate and was providing a genuine investment product. In doing so, I have considered Mr P's comments that he had friends and family who had already invested in V, been to a seminar and had been able to withdraw returns. He also received a brochure with an FAQ which looked to be professional and matched what other investors had received. Mr P says that he looked up V online and spoke to other investors, in doing so he was convinced they were legitimate. The website looked professional, and he was able to access an online portal that looked to be genuine. Mr P also had to provide his identification documents which again convinced him that this was a legitimate investment opportunity that required 'know your customer' checks.

Mr P hasn't clearly said what he expected the returns to be, and it appears some investors were told they could receive high levels of returns. But considering all of the other points above, I think there was enough to reasonably convince Mr P that this was a genuine investment he could trust. With this in mind, I don't think Mr P made the payments without a reasonable basis of belief that V and the investment itself was genuine. I therefore do not think NatWest can apply an exception to the reimbursement, so it should reimburse Mr P in full.

Putting things right

NatWest should reimburse Mr P the £10,000 in full.

It should also apply 8% simple interest from the date of the Investigator's view to the date of settlement. I say this because the information our service has relied upon to uphold Mr P's complaint was not readily available to NatWest when the scam claim was first raised. So, they would not have been able to identify the issues that led to the complaint eventually being upheld.

My final decision

I uphold Mr P's complaint and NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY should now pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 June 2025.

Rebecca Norris
Ombudsman