

The complaint

Mr B complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In early 2020, Mr B was told about an opportunity to invest with a local trading company by his mortgage advisor. He understood the company would trade on his behalf in foreign exchange and contracts for difference, and that he would receive returns on his investment. And as the director of the trading company was well-known in the local community and Mr B knew several other people who said they had invested successfully, he decided to invest himself.

In February 2020, Mr B then made a payment of £20,000 from his NatWest account to account details he was given for the trading company.

Mr B says he was sent monthly updates for some time, showing that he was making the profit he was told he would do. But when he then asked to withdraw some of the money he was told he had made, he was told there were issues with the trading company's accounts due to an investigation by HMRC. And when he also found out the FCA was investigating the trading company, Mr B thought he had been the victim of a scam and reported the payment he had made to NatWest.

NatWest investigated but said it was unable to look at Mr B's claim until the police investigation into the trading company has been completed. So it didn't agree to refund the money Mr B had lost. Mr B wasn't satisfied with NatWest's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought the available evidence was sufficient to say that Mr B had been the victim of a scam. And they didn't think NatWest had established that it didn't have to reimburse Mr B. So they recommended NatWest refund the money Mr B had lost, in full. NatWest disagreed with our investigator, so the complaint has been passed to me.

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 broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

NatWest is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

Is it appropriate to determine this complaint now?

NatWest has argued that the payment Mr B made is the subject of an ongoing complex investigation and that the CRM code allows for it to wait for the outcome of this investigation before making a decision on whether to reimburse him. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision it's already made. And NatWest appears to have initially told Mr B it was treating his claim as a civil dispute, rather than a scam – both its internal records and its final response letter to Mr B of 4 October 2024 mention that its scams team had told Mr B this was a civil dispute, at least in part because he had paid a registered and active company. So I don't think NatWest can now rely on this provision to delay its decision here.

In any event, I've also considered whether it would be appropriate to delay my decision in the interests of fairness, as an investigation into the trading company is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. 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. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

In order to determine Mr B'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. And I wouldn't proceed to that determination if I considered fairness to the parties demanded that I delay doing so. But I'm also aware that Mr B first raised his claim with NatWest in August 2023, 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 B 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.

The Lending Standards Board has also said that the CRM code does not require a criminal test to have been met before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, for reasons I'll explain in more detail below, I don't think it's necessary to wait for the outcome of any connected investigation or court case for me fairly to reach a decision on

whether NatWest should reimburse Mr B under the provisions of the CRM code. I'm satisfied there is already convincing evidence to demonstrate on the balance of probabilities that those who invested with the trading company were dishonestly deceived about the purpose of the payments they were making and that Mr B was the victim of a scam. So it is appropriate for me to consider this complaint.

Has Mr B been the victim of a scam, as defined in the CRM code?

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Mr B has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payment was legitimate, whether the purposes he and the trading company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr B made the payment here with the intention of investing with the trading company. I think he thought his funds would be used to trade in various markets or financial instruments, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr B didn't think this was legitimate.

But I think the evidence I've seen suggests the trading company didn't intend to act in line with the purpose for the payment it had agreed with Mr B.

The trading group had a number of receiving accounts it used to receive funds from investors during the time it was offering this investment, and I've been able to review information relating to several of these – including the account Mr B's payment went to. And the activity on these accounts is not in line with what I would expect to see where a company is legitimately investing client's funds.

Funds are transferred into these accounts, seemingly from investors, and then typically transferred out again to other individuals or to the director of the trading company. There's very little activity on the accounts, apart from this movement of funds. And there's very little evidence of any payments to or from trading platforms, any genuine returns from trading being used to pay clients, or any activity related to the kind of trading the company told investors it would be carrying out with their funds. So it appears the payments being sent back to individuals are being funded from payments into the accounts from other investors – which is behaviour consistent with a Ponzi scheme.

While I haven't seen any details or findings from their investigations, both HMRC and the FCA have been investigating the trading company. And the director of the trading company left the country shortly after HMRC started investigating the company's accounts – which isn't behaviour I'd expect from someone operating a legitimate investment.

So I think the evidence shows the trading company wasn't acting in line with the features of the investment it had led Mr B to believe he was making. And so the purpose the company intended for the payment Mr B made wasn't aligned with the purpose Mr B intended for the payment. And, given the behaviour of the director since the investigation started, I think the

discrepancy in the alignment of the payment purposes between Mr B and the trading company was the result of dishonest deception on the part of the company.

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. As I've explained above, there is significant evidence about the actual activity carried out by the trading company already available. And while the connected investigations are still ongoing, there is no certainty as to when they would be concluded nor what, if any, new light they would shed on the evidence and issues I've discussed.

I have considered that there may be evidence our service does not have access to or that may become available at a later date. But, for the reasons I've explained above, I'm satisfied there is sufficient evidence available here for me to come to a fair and reasonable decision on this complaint and I don't consider it likely that the outcome of any ongoing investigation or court case would significantly affect the conclusions I have reached. And so I still think the circumstances here meet the definition of a scam from the CRM code.

Is Mr B entitled to a refund under the CRM code?

As I explained above, NatWest is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mr B fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

NatWest has said that it stopped the payment Mr B made here and spoke to him before allowing it to leave his account. And I can see from its internal records that it put the payment on hold and spoke to him to confirm that it was genuine. But NatWest hasn't been able to provide a recording of this call, or any other detail of what was discussed during it. So I don't think it has established that it gave Mr B an effective warning, or that he ignored an effective warning in relation to the payment.

From what he's said, Mr B appears to have known or spoken to a number of other people who had invested with the trading company and received returns – including his own mortgage advisor who he'd known for a number of years, mutual friends and prominent members of his community. And I don't think it was unreasonable for Mr B to place a significant amount of weight on the recommendations he received from these people. Mr B says he also looked up the company and its director online, and all the information he found seemed genuine. The paperwork he was given in relation to the investment also appears relatively professional, so I don't think it's unreasonable that this didn't cause him significant concern. So I don't think NatWest has established that Mr B made the payment without a reasonable basis for believing that it was genuine.

And so I don't think NatWest has established that any of the exceptions to reimbursement under the CRM code apply here, and so it should refund the money Mr B lost in full.

Redress

From what I've seen, I think it's unlikely that any intervention by NatWest at the time of the payment would have uncovered the scam or positively impacted Mr B's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about the trading company such that Mr B would have chosen not to proceed. And, to be clear, I'm not making a finding that NatWest should have intervened at the time of the payment.

But I think NatWest should have reimbursed Mr B when he made a claim under the CRM code. So, in order to put things right, I think NatWest should now pay interest at 8% per year on the amount refunded, from the date of the deadline for its initial response to Mr B's claim until the date of settlement.

My final decision

For the reasons set out above, I uphold this complaint and require NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY to:

- Refund Mr B the £20,000 loss he suffered as a result of this scam
- Pay Mr B 8% simple interest on that refund, from the deadline for its original response to his claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 November 2025.

Alan Millward
Ombudsman