

## **The complaint**

Mrs C complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ('NatWest') declined to reimburse her when she says she fell victim to an investment scam.

## **What happened**

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, Mrs C was introduced to an investment opportunity by a financial adviser whom she had found online. He put her in touch with another individual, whom I will call 'J'. Mrs C and J knew some of the same people, whom Mrs C and her son had met through property investment courses. J told her he had invested with a company, which I will call 'B'. J showed her screenshots of the returns he was achieving with his investment with B.

Mrs C looked into B, and into the names of the individuals linked to B. She saw the returns J and others were receiving. She met with the director of B, and attended online meetings with other investors. She was persuaded to invest. By this point, she had known J for around a year so trusted him and had been in communication with B for some time, too. She understood her investment was in forex trading and that she should expect a return of up to 40% per annum. Mrs C made two payments from her NatWest account to B, both for £20,000, in July 2019.

Some time later, Mrs C was notified that B had gone into liquidation. Mrs C did not receive her returns, or her initial investment back. She said that she later realised she had fallen victim to a scam and so instructed her representatives to raise a claim with NatWest on her behalf.

NatWest reviewed Mrs C's claim but declined to reimburse her on the basis that it believed that what happened to Mrs C amounted to a private civil dispute, rather than a scam.

Mrs C was unhappy with NatWest's response, so she escalated her concerns to our service. One of our investigators looked into what had happened and recommended that Mrs C's complaint should be upheld. They said that they were satisfied this amounted to a scam, and under the provisions of the Lending Standard Board's Contingent Reimbursement Model ('CRM') Code, NatWest were liable to reimburse her in full, along with 8% simple interest, calculated from the date of NatWest's initial decision not to reimburse her, to the date of settlement.

NatWest did not accept our investigator's recommendations. It said that it did not think that B was a scam, and that what happened to Mrs C amounted to a private civil dispute.

As no agreement could be reached, the case has been passed to me to decide.

## **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.

When considering what is fair and reasonable, I am 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 relevant time.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's accounts. 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 provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It is a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. NatWest was a signatory to the Code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) as:

*“Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs 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 clear at DS2(2)(b) that it does not apply to *“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”*

If I conclude that the payment here meets the required definition of a scam then Mrs C would be entitled to reimbursement, unless NatWest has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place 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, in order to determine Mrs C's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that she was the victim of a scam rather than this being a failed or bad investment.

*Has Mrs C been the victim of a scam, as defined in the CRM Code?*

The Code does not 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, it would not apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I do not consider the first part of the definition quoted above (DS(2)(a)(i) is met in this case. This is not in dispute. But what is in dispute is whether Mrs C's payments meet DS1(2)(a)(ii). So I have gone on to consider if her intended purpose for the payments was legitimate, whether the intended purposes she and B had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of D.

From what I have seen and what Mrs C has told us, I am satisfied that she made the payments with the intention of investing. I have not seen anything to suggest that she did not think this was a legitimate venture – and as NatWest argues this is a civil matter, it too seems to accept this.

I've then considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or a genuine investment.

The evidence I hold suggest that B was operating as a genuine forex trading investment opportunity at one point – it invested nearly £5,000,000 of investors' funds with a legitimate forex trading platform authorised and regulated in another jurisdiction, and for a number of years investors received returns which were often substantial.

I also understand that the police investigation, at last update, was continuing to investigate B, but no charges have been brought that I am aware of, against those individuals responsible for B.

However, by the time Mrs C made the payments to B, I am not satisfied that it was operating a legitimate enterprise. There is compelling evidence which establishes that investors were dishonestly deceived about the purpose of the payments they were sending to B. And so it follows that I am persuaded that Mrs C's payments to B meet the definition of an APP scam under the CRM Code, rather than a mere civil dispute. I will explain why.

B was not authorised by the FCA. It would have needed to be regulated by the FCA to take part in the activity it was alleging to be engaged in. Private investment funds do not solicit investments from the general public or retail investors, which is what B were doing here. So I am persuaded that B misled investors over regulatory requirements for the activities it was said to be undertaking, and I have seen this in writing in its managed account agreements.

Reviewing the evidence our service has received, it appears that B received approximately £28,000,000 from individual or business investors. But only £4,700,000 looks to have been used for the intended purpose of forex trading – less than 17% of the investment capital received. They made returns of roughly £4,100,000 – indicating that there was a trading loss of £600,000. Regardless of the fact that less than 17% of investment capital was traded, which resulted in a loss, roughly £19,000,000 was paid out to investors. This amounted to almost 68% of the investment capital received. The leftover funds were not traded – but instead appear to have been withdrawn to accounts linked to B or its associates.

B offered either loan agreements or managed account agreements – with returns of capital and 15-40% interest promised for the former, and a return of at least 48% for the latter. Mrs C had a loan agreement with B. There is no available evidence to suggest that B could substantiate the rate of returns their investors were expecting. Nor is there evidence that B were trading forex or otherwise investing successfully and generating the profits they claimed to be generating.

So, I am of the opinion that B were not using investor funds for the purpose in which they were understood or intended by Mrs C, and this shows that it is more likely than not that they were not a 'legitimate supplier' of the investment services they claimed to be. I do think that

the evidence suggests that their conduct went beyond misleading investors about a legitimate investment opportunity, and that the real purpose of the payments received was different to what Mrs C and other investors were led to believe – and this was done through deception.

Whilst Mrs C did not receive any returns, other investors did. But it appears that any returns that these other investors received were likely sent to encourage further investment. This further investment would either be from existing or new investors who were recommended the opportunity from others who had already invested – as Mrs C's acquaintance had recommended B to her after he had received returns. So, even if any of Mrs C's money was used to trade forex, or otherwise invest or trade, it was likely with the intention of encouraging more investment as part of an overall scam.

So, having considered everything, I am persuaded that B was more likely than not, operating a sophisticated APP scam. I am satisfied that Mrs C's payments to B meets the definition contained within the CRM Code. And so it follows that NatWest cannot fairly refuse to consider refunding Mrs C under the provisions of the CRM Code on the basis that it amounted to a private civil dispute. So, I have gone on to consider whether Mrs C should be reimbursed under the CRM Code.

#### *Is Mrs C entitled to a refund under the CRM Code?*

Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mrs C. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning. A second circumstance in which a bank might decline to reimburse, is if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

NatWest have provided a copy of the warning that it says Mrs C would have seen at the time she made the payments. However, it has not been able to provide evidence to show what payment purpose Mrs C selected, nor conclusive evidence that a warning was provided to Mrs C – rather generic information on what warnings were shown around this time. So, I am satisfied that NatWest cannot rely on the exception to reimbursement that Mrs C ignored an effective warning in this case.

I also do not think that it would be fair or reasonable for NatWest to rely on the exemption to reimbursement that Mrs C sent the funds without a reasonable basis for believing that she was sending funds to a legitimate investment. Given that NatWest are still arguing that B was potentially a legitimate investment gone wrong, it would be hard to argue that Mrs C did not have a reasonable basis for believing that B was a legitimate company. And I think that there are other elements of what Mrs C knew at the time she made the payments that would have given her a reasonable basis for belief that B was legitimate. This includes the manner in which Mrs C was introduced by a trusted acquaintance who she had known for over a year at the point of investment, who said he had received returns, and showed her evidence of this. I would also point to the fact of the meetings she had with the director of B, which included testimony from existing investors and a historic performance presentation. I have also taken into account the sophistication of the communications from B. Considering all of this – I think there was nothing that ought to have led Mrs C to believe she was dealing with an illegitimate company.

With this in mind, I do not think that NatWest have established that any of the exceptions to

the presumption of a full refund under the CRM Code apply here. And so, it follows that NatWest should reimburse Mrs C in full under the provisions of the CRM Code.

### **Putting things right**

In order to put things right, I direct NatWest to:

- Refund Mrs C the £40,000 lost to the scam; and
- Pay 8% simple interest per annum on this amount from the date her claim was declined under the CRM Code to the date of settlement.

As B is going through insolvency proceedings, it is possible Mrs C could recover some further funds in the future. In order to avoid the risk of double recovery, NatWest is entitled to take, if it wishes, an assignment of rights to all future distributions under this process before paying the award.

### **My final decision**

I uphold this complaint, and require NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY to reimburse Mrs C in line with what I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 January 2026.

Katherine Jones  
**Ombudsman**