

## **The complaint**

Mr R complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ('NatWest') won't refund the money he says was lost as the result of a scam.

## **What happened**

The background to this complaint isn't in dispute, so I won't go into detail.

In summary, Mr R made an investment with a company I'll refer to as C.

C would purchase cars with investors' funds, then lease the cars out to individuals who might not otherwise be able to access a leased vehicle.

Mr R transferred £28,000 on 30 April 2020 to C, from his NatWest account. Mr R expected a return of 10% per annum.

Mr R received 9 monthly returns of £534.72 between May 2020 and January 2021.

In March 2021, C went into administration.

Mr R believes the investment was a scam, and through a professional representative, raised a fraud claim with NatWest.

NatWest considered Mr R's fraud claim but declined to refund him. NatWest say C offered a high-risk investment and Mr R should pursue a claim through the administrators. NatWest say they're not responsible for Mr R's loss.

Mr R wasn't happy with NatWest's response, so he brought a complaint to our service.

An investigator looked into Mr R's complaint and recommended that NatWest refund his outstanding loss. The investigator says the evidence showed that Mr R's funds weren't used for their intended purpose and were obtained by dishonest deception, so his claim is covered by the Contingent Reimbursement Model Code (CRM Code). And, under the CRM Code, Mr R is entitled to a full refund as he had a reasonable basis for believing the investment was legitimate when he made the payment.

NatWest provided a substantial response to the investigator's view, including:

- Concerns about our ability to reach a fair answer having one side of the argument and not being privy to the alleged perpetrator's side. Also, concerns based on the complexity of the case and the ongoing court case.
- Why we're satisfied we can reach an answer as to whether the case is covered by the CRM Code, specifically DS1(2)(ii), without a conclusion to the court case.
- We haven't fairly considered whether this is a failed investment, as there are no charges or guilty pleas in relation to the SFO investigation. Also, C were operating successfully for a significant period of time, and an FCA regulated entity was affiliated with C and the investment.

- Investors may be entitled to a refund under the FSCS which indicates a failed investment, and C retains significant assets related to their “as described” business model.

NatWest asked for an ombudsman to review the case.

### **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.

NatWest have raised a number of points in response to the view, and I’m aware that our service has previously responded to the points they’ve raised in detail. I’d like to reassure NatWest that I have considered all the points they’ve raised. But I’ve focused my decision on what I consider to be the crux of the complaint and how I’ve reached my decision.

In deciding what’s fair and reasonable in all the circumstances of a complaint, I’m required to take into account relevant: law and regulations; regulators’ rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I’ve reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position in law is that NatWest are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer’s account and the Payment Services Regulations (PSR’s).

#### 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 police investigation and court case is still ongoing.

There may be circumstances and cases where it’s appropriate to wait for the outcome of external investigations 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 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 – as explained above – is the balance of probabilities).

As for investigations by liquidators/administrators, these are normally made for the purpose of maximizing recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues in this complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

In order to determine Mr R'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 Mr R 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 R first raised his claim with NatWest in July 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 R 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 C's creditors/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 R 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 court proceedings to conclude for me fairly to reach a decision on whether NatWest should reimburse Mr R under the provisions of the CRM Code.

#### Is Mr R entitled to a refund under the CRM Code?

NatWest are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code 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. The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr R made his payment, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr R thought this purpose was legitimate.
- The purpose the recipient (C) had in mind at the time of the payment and whether this was broadly in line with what Mr R understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr R was making a payment to C as part of an investment. Based on the evidence that Mr R had available at the time, there isn't anything to suggest he didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose C had in mind and whether it was in line with what Mr R thought.

In reaching an answer on what purpose C had in mind, I've considered the wider circumstances surrounding C, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, "encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised".
- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mr R's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mr R's funds weren't used for the intended purpose and that C obtained the funds through dishonest deception. So, I'm satisfied that Mr R's payment meets the definition of an APP scam and is covered by the CRM Code.

The CRM Code says that Mr R is entitled to a full refund unless NatWest can establish that an exception to reimbursement applies.

NatWest haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness I have considered this point.

#### Does an exception to reimbursement apply?

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

*\* There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

I'm satisfied that Mr R had a reasonable basis for believing the investment was legitimate. I say this because Mr R heard it advertised on the radio, which lent it an air of authenticity. Also, he saw positive reviews from other investors and his family visited C's offices.

I haven't seen any evidence that suggests there were warning signs that C wasn't offering a genuine investment when Mr R made his payment in April 2020. So, NatWest couldn't rely on basis for belief as an exception to reimbursement.

NatWest haven't said that an effective warning was ignored when Mr R made his payment and haven't provided evidence of any warning being presented at the time.

Based on the size of the payment, I'm satisfied that it was unusual and out of character for Mr R's account. So, I would've expected NatWest to have identified a potential risk of financial harm and provided an effective warning.

As NatWest haven't evidenced that an effective warning was presented, I can't fairly say that Mr R ignored such a warning. This means NatWest can't rely on this exception to reimbursement either.

As, I'm not satisfied that NatWest can rely on an exception to reimbursement, Mr R is entitled to a full refund of £28,000 plus the CHAPs fee of £23. NatWest can deduct from that refund the returns that Mr R received (which total £4,812.48), meaning the net refund should be £23,210.52.

### The interest award

Prior to the SFO completing their investigation, Mr R's payment wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, NatWest should've considered the available evidence and given Mr R an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

### Claims through FSCS

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about the FSCS's position on claims submitted to FSCS against Raedex can be found here: <https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/>

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for the FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mr R is now complaining to us about in connection with the activities of C.

As I have determined that this complaint should be upheld Mr R should know that as he will be recovering compensation from NatWest, he cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount he recovers from NatWest he may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr R has already made a claim at FSCS in connection with C, and in the event the FSCS pays compensation, Mr R is required to repay any further compensation he receives from his complaint against NatWest, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here <https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice>

## **Putting things right**

To put things right I require National Westminster Bank Plc to:

- Refund Mr R £23,210.52, and
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement.\*
- In order to avoid the risk of double recovery NatWest is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

\* If NatWest considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

## **My final decision**

My final decision is that I uphold this complaint against National Westminster Bank Plc and require them to compensate Mr R, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 July 2025.

Lisa Lowe  
**Ombudsman**