

The complaint

Mr M complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY (NatWest) has not refunded money he lost to a scam.

What happened

Mr M was talking with a friend, who invited him to the offices of an investment company, which I'll call B. There, Mr M was introduced to Mr P, a director of B. Mr P discovered Mr M worked in property development and hired Mr M to renovate his property. Mr M was aware that Mr P and the other directors of B appeared to be very successful. So, when Mr P told Mr M about an investment opportunity with B, Mr M decided to get involved.

Mr P said Mr M could receive returns of 3% per month (10% per quarter). Mr M says he had no real investment experience, but that Mr P seemed very knowledgeable and was persuasive. Mr M says he looked at B's website, which appeared professional, and checked B's records on Companies House. He was satisfied that B appeared legitimate and that it was a good investment opportunity. Over around four months Mr M made the following payments from his personal current account, to B and to Mr P directly:

Date	Payee	Amount
21/02/2022	Payment to B	£125,023
10/05/2022	Payment to Mr P	£20,000
10/05/2022	<i>Attempted payment to Mr P*</i>	<i>£75,000</i>
11/05/2022	Payment to Mr P	£12,000
12/05/2022	Payment to Mr P	£20,000
13/05/2022	Payment to Mr P	£18,000
16/05/2022	Payment to Mr P	£5,000
06/06/2022	<i>Credit from B**</i>	<i>£12,500</i>

*This payment was refused by NatWest when Mr M was unable to produce paperwork regarding his investment with Mr P.

**Our investigator's view also referred to a credit of £25,000, but this was paid into Mr M's business account and has been taken account of in the redress paid by NatWest on the separate complaint we have considered regarding the business account.

After receiving the £12,500 credit, which represented the first interest payment Mr M had been told he was due, Mr P began to distance himself, saying he was too busy to reply to Mr M. Mr P then said he no longer wanted to continue with the home renovations he'd engaged Mr M to do. Mr M began to have some concerns about what was going on and reviewed B's records on Companies House, where he discovered Mr P had left the company. At this stage he contacted the other directors of B who confirmed that Mr P had left the company and taken the money with him. Mr M realised that he had likely been scammed, so he reported the matter to the police and contacted NatWest (via a representative) to let it know what had happened.

NatWest looked into what had happened but declined to refund any of Mr M's loss. It said it had showed Mr M appropriate warning messages, that the payments had not matched any fraud trends and so not been deemed suspicious, and that when Mr M had tried to make a payment of £75,000 in branch NatWest had refused to process the payment. It also said that Mr M had not raised the scam claim with its scam team, so it had been unable to investigate the scam claim itself.

Mr M was unhappy with NatWest's response, so he referred his concerns to our service. NatWest initially was insistent that Mr M had never raised a scam claim, and so it could not provide its file. Our Investigator explained that the complaint letter sent by Mr M's representatives detailed all the disputed payments and the circumstances of the scam, and that NatWest had ample time to look into the scam after receiving that letter. Ultimately NatWest did provide a file on this complaint.

One of our Investigators considered Mr M's complaint, they felt that Mr M had been scammed and so the payments should be covered by the Lending Standard's board's Contingent Reimbursement Model Code (the CRM Code) which was in place at the time of the payments. When considering the Code, the investigator felt that none of the exceptions to reimbursement applied, so they felt that NatWest should refund Mr M in full for his loss, plus 8% interest from the date it had declined his claim.

Mr M accepted the Investigator's findings, but NatWest did not. It said that any findings on this complaint should be delayed under section R3(1)(c) of the Code until the outcome of the police investigations into B and Mr P is known, as it considered that might reasonably inform any decision on this matter.

So, as no agreement could be reached regarding this complaint, it has been passed to me for review.

To add some additional context, I think it is worth noting that the Investigator issued a view along the same lines as her findings on this complaint on Mr M's complaint about the payment he made to Mr P from his business account. NatWest agreed to settle that complaint in line with the Investigator's findings and has refunded Mr M's full loss from his business account (minus the returns he received).

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.

Having done so, I've reached the same outcome as our Investigator and for broadly the same reasons.

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 is still ongoing. I also understand that the liquidator's/administrator's enquiries are continuing.

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).

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 on the 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 M'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 M first raised his concerns with NatWest in August 2022 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 M 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 B'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 M 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 any investigations by the police (or the liquidator) for me to fairly reach a decision on whether NatWest should reimburse Mr M under the provisions of the CRM Code.

Has Mr M been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Mr M authorised the payments that are the subject of this complaint. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transactions. 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 payments Mr M made to B and to Mr P fall under the scope of an APP scam as set out above. Having done so, I think that they do.

I say this because our service is now aware of a number of issues related to B and Mr P, which suggest to us it is more likely they were carrying out a scam. Specifically:

- B wasn't regulated by the FCA, which it needed to be to undertake the activity it was alleging to be engaged in. Private investment funds don't solicit investments from retail investors or the general public, which is what B (and Mr P) did here. So, it does appear to have mis-led investors over the need to be regulated, and put that in writing in its managed account agreements.
- Over 80% of money sent to B (under a loan agreement or managed account agreement) wasn't used for investment purposes, but almost 68% was paid out to investors. As a result, I'm satisfied that payments made to B controlled accounts in the UK were most likely the result of a Ponzi scheme and should be investigated as an APP scam.
- There's no evidence available to demonstrate B was trading forex successfully or generating the profits it claimed to be making.
- It seems to be the case that any returns investors received were likely sent to encourage further investment, either from existing investors or new investors who were recommended the opportunity from others who had already invested. Therefore, even if any of the funds Mr M sent were used to trade forex, it was likely with the intention of encouraging further investment as part of an overall scam.

Having carefully considered all the evidence, I'm of the opinion that B and Mr P most likely weren't using investor funds for the purpose in which they were intended, and this demonstrates that they weren't the "legitimate supplier" of a service. I think their conduct went beyond simply misleading investors about a genuine investment opportunity and that the real purpose of the payments received was different to what Mr M and other investors were led to believe – and this was through deception. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

I also think it is worth noting that NatWest has settled Mr M's complaint about a payment made from his business account to the same scam. It is not clear why NatWest was willing to settle that complaint if, as it claims, it considers there is inadequate evidence currently available to say that B/Mr P were operating a scam.

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 police investigation, 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 M entitled to reimbursement under the CRM Code?

I've considered whether NatWest should refund Mr M under the provisions of the CRM Code. Under the CRM Code the starting position is that a firm should reimburse customers who have been the victim of an APP scam, except in limited circumstances. These circumstances include:

- Where the firm can establish that the customer made the scam payments without a reasonable basis for believing that they were for genuine goods or services; and/or that the payee was legitimate.
- Where the firm can establish that the customer ignored an "effective warning" (as defined by the Code)

So, I've thought about whether Mr M had a reasonable basis to believe B (and Mr P) was legitimate and was providing a genuine investment opportunity. In doing so, I have considered that Mr M was initially introduced to B by a friend, and that before he began to invest he had built a fairly close and trusting relationship with Mr P. Mr M also carried out his own research, and found nothing to cause him any concerns. I acknowledge that B was not regulated by the FCA, and that it should have been, but as an inexperienced investor I don't think that's something Mr M would have been expected to know he needed to check. Mr M was also provided with professional looking loan agreements, which would have further convinced him that B was a legitimate enterprise. Finally, I don't consider that the rate of return Mr M was told he could receive was so high that it should have raised his suspicions, particularly as he was by all accounts not experienced in this kind of investment.

So, given what Mr M had been told and had seen, and what he had found out himself, I think there was enough to reasonably convince Mr M that this was a genuine investment he could trust. With this in mind, I don't think Mr M made the payments without a reasonable basis of belief that B and Mr P were acting legitimately.

I've also thought about the warnings that were provided when Mr M made these payments, along with any interventions that took place. But having done so I don't think I can fairly say that Mr M ignored an effective warning during the course of this scam. NatWest has been unable to pinpoint exactly what written warning Mr M might have seen, as it says it has no record of what payment purposes he may have selected. But in any case, the written warnings it has provided for all the possible payment purposes do not meet the definition of an effective warning as set out in the Code.

I also note that NatWest appears to have spoken to Mr M in person on two occasions during the scam, when he made the first payment (for £125,000) and when he tried to make a payment of £75,000 direct to Mr P. But the limited information I have about what was discussed at those meetings does not demonstrate that Mr M was given, or went on to ignore, anything that could be classed as an effective warning which was relevant to his circumstances. The £75,000 payment was declined by NatWest, but apparently only because Mr M did not have paperwork to support the investment at that time, not because NatWest had any specific scam concerns. I'm therefore satisfied that Mr M did not see any warnings that could reasonably be expected to have affected his basis for belief that B and Mr P were legitimate.

I therefore do not think NatWest can apply the potentially relevant exceptions to reimbursement here, so it should reimburse Mr M in full.

Putting things right

NatWest should reimburse Mr M's loss in full, minus the credit of £12,500 he received on 6 June 2022.

It should also apply 8% simple interest per annum from the date of its final response to the date of settlement. I say this because information to demonstrate that B was a scam was publicly available at the time the complaint/claim was raised.

My final decision

I uphold this complaint. NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 September 2025.

Sophie Mitchell
Ombudsman