

The complaint

Mrs P complains NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ('NatWest') hasn't reimbursed her following an authorised push payment ('APP') investment scam she fell victim to. She says NatWest should reimburse her for the money she lost.

In bringing her complaint, Mrs P has used the services of a professional representative. Within this decision, for ease of reading, I will refer solely to Mrs P.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

In August 2022, Mrs P was introduced to an investment company whom I'll refer to as 'V'. Mrs P received an email from an individual whom I'll call 'Mrs J'. Mrs P says she knew of Mrs J in a business capacity for around six years.

Mrs P says Mrs J advised her that she had invested through V, and she was making profits of between 8-11%. And Mrs J explained this was achieved through a collection of managed funds that were all Financial Conduct Authority ('FCA') regulated. Mrs P also received brochures and marketing materials about V from Mrs J which she thought looked professional and convincing. Mrs P and her husband – Mr P, were interested in investing with V and they subsequently attended an online webinar hosted by the founders of V.

Mrs P, believing everything to be genuine, transferred £10,000 on 23 August 2022 from her account with NatWest to the personal account of one of the founders of V – whom I'll call 'Mr C'. This payment was for the investment that was to be in Mrs P's name.

Mrs P's husband also invested with V and did so from their joint account with NatWest.

Mr and Mrs P's complaint about the payments Mr P made towards the investment from their joint account with NatWest is being considered under a separate reference with this service.

Mrs P was given access to a platform which showed her how her investments were doing. In October 2022, Mr and Mrs P were invited to, and attended, an in-person 'Investor Strategy Meeting' event where they got to meet the founders of V.

Happy with the event and with what they had seen and heard, and happy with how things were seemingly progressing with their investment, Mrs P (and Mr P) made further payments to the investment with V, receiving email confirmation that their funds had been deposited into V's FCA regulated broker's account.

In total, Mrs P made the following payments from her account with NatWest to V:

Payment number	Date	Payment type and beneficiary	Amount
1	23/08/2022	Faster payment to Mr C	£10,000
2	21/10/2022	Faster payment to Mr C	£20,000
3	24/10/2022	Faster payment to Mr C	£20,000
		Total	£50,000

In April 2023, Mr and Mrs P were recommending the investment to their son and daughter and they were asked if they had withdrawn any funds from V. As Mr and Mrs P hadn't, Mrs P submitted a withdrawal request for £17,000 from V. V responded advising it had changed banking provider which was affecting its ability to accept deposits or process withdrawals. Mrs P chased again in May 2023 and highlighted to V that there was now negative information about V online and on the FCA's website. Mrs P also chased Mrs J about the matter. Mrs J advised she was unwell, but she had invested money with V as well and was waiting to hear an update.

Shortly after, on 18 May 2023, V emailed its investors. V advised that it had been working with the FCA and the FCA had requested information from V on a number of details. V explained it was working with its lawyers to ensure it provided everything the FCA needed. V explained as part of the process it had been asked to temporarily pause any trading until the situation was resolved. In June 2023 a message was added to V's website saying V had been in communication with the FCA since 18 April 2023 and if investors had any queries, they needed to contact the FCA. Mr and Mrs P contacted the FCA and was told it was carrying out an investigation into V.

Ultimately neither Mrs P or her husband were able to retrieve any of the funds they had invested or any profits they thought they had made from V.

Mrs P reported the matter to NatWest, to try and recover her funds or be reimbursed her loss under the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). This was a voluntary code that NatWest was a signatory of. The CRM Code required firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances.

NatWest issued its final response to Mrs P in November 2023. It advised that due to an ongoing FCA investigation it would review her (and her husband's claim) once it received notification from the FCA. It went on to explain that Mrs P could refer the matter to our service also.

One of our Investigators looked into the matter and upheld Mrs P's complaint. In short, they explained that they did not think it was fair for NatWest to wait for the FCA's investigation into V to be concluded, before making a reimbursement decision under the CRM Code. 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 CRM Code and did not think any exception to reimbursement applied.

They therefore recommended a full refund of the payments Mrs P made totalling £50,000, as well as 8% simple interest from 15 days after Mrs P raised her fraud claim with NatWest to the date of settlement.

Mrs P accepted the findings, however NatWest did not.

In short, NatWest did not think it could be concluded that V was operating as a scam until the FCA's investigation was concluded. It considered within the CRM Code there was a provision which stated that if a case is subject to investigation by a statutory body and the outcome might reasonably inform a firm's decision, then a firm may wait for the outcome of that investigation. So, NatWest considered our service should wait until the outcome of the FCA investigation is known.

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.

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 have been good industry practice at the time.

NatWest was a signatory to the CRM Code. It required firms to reimburse victims of APP scams in all but a limited number of circumstances.

The main point of dispute here is whether V was operating as a scam or not. NatWest are relying on R3(1)(c) of the CRM Code to defer making a decision on this point. R3(1)(c) says:

"...If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision."

So, 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 Mrs 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 Mrs P 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 Mrs P first raised her claim with NatWest in November 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 Mrs 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 Mrs P under those processes in respect of this investment before paying anything I might award to her on this complaint.

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

In order to reach a decision, I've considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined as:

"...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."

DS2(2)(b) explains that 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."

Of particular relevance here is whether Mrs P transferred funds to V for what she believed to be legitimate purposes, but which were, in fact, fraudulent.

It's evident that V had some features that gave it the impression of operating legitimately. There are identifiable individuals associated with V who held in-person and online events to promote the investment. And many people who lost money had been introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

There is also evidence that some of the money that was received by the founding individuals at V (though not the limited company V) did end up with a foreign exchange ('Forex') platform (which wasn't FCA regulated but was part of a group of companies – of which one was FCA regulated). It also appears that some funds sent to V's bank account were converted into cryptocurrency and sent to the Forex platform.

However, I've found the following facts to be persuasive evidence that V was operating as a scam:

- 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.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with an FCA authorised trading exchange and that it was regulated.

- Less than half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of Forex trading. Whereas Mrs P sent funds to V with the understanding they would immediately be moved to an FCA regulated trading account to be used in Forex trading, as Mrs P's agreement with V set out and as she was told in communication following her investment deposits. But this didn't happen.
- Of the investors' funds that were sent to V's business account, these were either sent to a cryptocurrency exchange platform or paid to other investors as withdrawals. Investors were led to believe they were investing with a regulated entity and that their funds would be deposited in a regulated trading account. It wasn't advertised to investors that their funds would be moved/invested into unregulated cryptocurrency. Furthermore, approximately 20% of the funds moved to the cryptocurrency exchange platform weren't subsequently forwarded to the Forex trading account.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- The returns from the Forex platform are significantly less than the returns paid to investors, suggesting returns were funded using other investors' money and weren't profits made from investing.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was sent to V was not used for its intended purpose. The evidence suggests that Mrs P wasn't involved in a failed investment but 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. There is no certainty that any prosecutions will result from the FCA's investigations nor what, if any, new light they would shed on the evidence and issues I've discussed.

So, as I'm satisfied Mrs P has most likely been the victim of an APP scam, I've considered whether she should be reimbursed or not under the CRM Code.

Is Mrs P entitled to reimbursement under the CRM Code?

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

- Mrs P made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.
- Mrs P ignored what the CRM Code deems to be an 'Effective Warning'.

And importantly, when assessing whether it can establish these things, NatWest must consider whether they would have had a 'material effect on preventing the APP scam'.

I have considered whether Mrs P had a reasonable basis to believe V was legitimate and was providing a genuine investment product.

In doing so, I have given careful consideration as to how Mrs P (and Mr P) were introduced to V. I find this to be an important factor when considering whether Mrs P held a reasonable basis of belief when making payments to V. Mrs P (and her husband) were introduced to V by Mrs J who had been investing through V already. Mrs P had known Mrs J, in a business capacity, for around six years. And Mrs P had previously attended workshops and training seminars Mrs J had put on. Mr and Mrs P were aware that Mrs J's company was also FCA regulated. So, I can understand why, after receiving contact from Mrs J about investing through V, Mr and Mrs P thought it was a genuine investment opportunity that was being presented to them.

I am also mindful they were provided with supporting / promotional materials about V and attended an online seminar with the founders of V prior to initially investing. And then later on Mr and Mrs P attended an in-person event also – meeting the founders of V.

When I consider this, and think about the sophistication of this scam, so being introduced to V by Mrs J who Mrs P had known for a long time having had dealings with her company in the past, the marketing materials about V, the online seminar and in-person event, the account opening process, V's website, the client portal and the ability to track supposed investments, I can understand why Mr and Mrs P felt the investment was a genuine one at the time.

I accept some of the claims made by V about the returns it could generate seem unlikely. Mr and Mrs P were advised by Mrs J that they could expect to make around 8-11% in returns per month in profit. And this was less than the what the promotional material set out V could seemingly achieve. But, and importantly, I have to weigh up that Mr and Mrs P weren't experienced investors, and I have to also consider what they had been told by Mrs J and what they had seen others seemingly get in returns including Mrs J. I think the sophisticated aspects of the scam, particularly with Mr and Mrs P being introduced to V by Mrs J and the online seminar and in-person event they attended, outweighs the concerns that Mr and Mrs P perhaps ought to have had about the returns being claimed.

On balance, I think there was enough to reasonably convince Mrs P at the time that this was a genuine investment company. With this in mind, I don't think Mrs P made the payments without a reasonable basis of belief that V and the investment itself was genuine.

NatWest has not provided any evidence that it warned Mrs P before she went ahead with the payments, so it cannot demonstrate she ignored any 'Effective Warnings' and therefore cannot rely on that exception to reimbursement.

I appreciate NatWest hasn't provided any evidence in relation to any warnings it may have provided Mrs P at the time she was making the payments – due to it considering it should await the outcome of the FCA investigation. But it had the opportunity to provide its submissions about the payment journey steps Mrs P undertook when the complaint was with our service and didn't.

I am also mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a 'material effect on preventing the APP scam'.

Here, Mrs P had no reason to believe that V wasn't a genuine investment company at the time. So even if NatWest were to have provided Mrs P with a relevant or tailored warning about investment scams – I think it is fair to say it wouldn't have had a material effect on preventing the scam, such was her belief in V and that things were legitimate. So, I do not think an exception to reimbursement can be applied for this reason in any event.

Overall, I do not consider it necessary to await the outcome of the FCA investigations into V and any subsequent proceedings. I am satisfied, based on the evidence available, that Mrs P was more likely than not the victim of an APP scam. And her fraud claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied NatWest should reimburse Mrs P under the provisions of the CRM Code. And NatWest is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Mrs P under the processes relating to the FCA investigation and any potential compensation that may be returned to victims.

In relation to compensatory interest, I think it should be paid from the date our Investigator gave their view of this complaint (20 December 2024). I'm satisfied that the information disclosed in that view was sufficient for NatWest to conclude that Mrs P had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations. This has been explained to Mrs P's representatives who have agreed.

Putting things right

I uphold this complaint. NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY should pay Mrs P:

- £50,000 she lost to the scam orchestrated by V; and
- 8% simple interest on that amount from 20 December 2024 to the date of settlement.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 7 July 2025.

Matthew Horner
Ombudsman