

## The complaint

Mr and Mrs R complain that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ('NatWest') won't refund the money they 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 and Mrs 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 and Mrs R made the following payments as part of the scam.

| Date       | Pmt | Details of transaction | Amount  |
|------------|-----|------------------------|---------|
| 30.9.2019  | 1   | Payment to C           | £14,000 |
| 26.11.2019 | 2   | Payment to C           | £14,000 |
| 27.2.2021  | 3   | Payment to C           | £14,000 |
| 28.4.2020  | 4   | Payment to C           | £14,000 |
| 29.4.2020  | 5   | Payment to C           | £14,000 |
| 11.9.2020  | 6   | Payment to C           | £14,000 |
| 14.9.2020  | 7   | Payment to C           | £14,000 |
| 25.9.2020  | 8   | Payment to C           | £20,000 |
| 28.9.2020  | 9   | Payment to C           | £20,000 |
| 29.9.2020  | 10  | Payment to C           | £2,000  |
| 30.11.2020 | 11  | Payment to C           | £14,000 |
| 21.1.2021  | 12  | Payment to C           | £20,000 |
| 22.1.2021  | 13  | Payment to C           | £8,000  |

In March 2021, C went into administration.

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

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

Mr and Mrs R weren't happy with NatWest's response, so they brought a complaint to our service.

An investigator looked into Mr and Mrs R's complaint and recommended a refund of the outstanding loss in relation to payments 8, 9 and 10 only. In their view, the investigator said:

- For all of the payments, except 8, 9 and 10 – the payments were used to set up

investments in the name of companies B and P – who Mr R is a director of.

- Our service cannot consider a complaint about the payments, (excluding 8, 9 and 10) as Mr R isn't an eligible complainant under the DISP rules. This is because Mr R wasn't acting in a personal capacity and wasn't acting outside of his business, trade or profession.
- Payments 8, 9 and 10 can be considered by our service and the investments were made in Mr and Mrs R's personal names for these payments.
- The evidence supports that B didn't use the investor's funds for the agreed purpose, so the circumstances under which payments 8,9 and 10 were made, meets the definition of an APP scam under the Contingent Reimbursement Model Code (CRM Code).
- Under the CRM Code, NatWest can't rely on an exception to reimbursement as Mr and Mrs R had a reasonable basis for believing the investment was genuine. So, Mr and Mrs R are entitled to a full refund of payments 8,9 and 10. But NatWest can deduct the returns that Mr and Mrs R received in relation to these three investments, which total £3,208.32. This means a net refund of £38,791.68.

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.
- It's unclear 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.

Mr and Mrs R provided a substantial response to the investigator's view. As part of this they raised the following points:

- The payments (excluding 8, 9 and 10) were made on behalf of B and P.
- The accounts that these payments were made from are held in the name of B and P, which is supported by the bank statements shared with us.
- These accounts are included in B and P's company accounts and are fully accounted for in terms of VAT, Corporation Tax and Company Annual Returns to HMRC.

Both parties 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.

### Payments 1 to 7 and 11 to 13

We can't look at every complaint that's referred to us. We can only consider a complaint if it falls within certain criteria laid down in our case-handling rules, which are found in the Dispute Resolution section of the Financial Conduct Authority Handbook (available online). They are known as the Dispute Resolution Rules (DISP).

The relevant DISP rules to this case are DISP 2.7.1(R) which says that:

*"A complaint may only be dealt with under the Financial Ombudsman Service if it is brought by or on behalf of an eligible complainant"*.

There are two tests, which must both be met, to be an eligible complainant.

Firstly, DISP 2.7.3(R) says:

*"An eligible complainant must be a person that is:*

*(1) a consumer...."*\*

\* there are other definitions for a person, but they don't apply in this case.

The second part of the test requires the eligible complainant to have a complaint which arises from matters relevant to one or more specific relationships with the respondent.

### Do Mr and Mrs R meet the two tests to be considered eligible complainants?

I'm satisfied that Mr and Mrs R meet the second test, as they are customers of NatWest and the payments were made in relation to the transfer of funds as the result of an alleged APP fraud. So, Mr and Mrs R have one of the specified relationships with NatWest as set out in the DISP rules.

So, I've considered whether Mr and Mrs R also meet the other test.

The DISP rules define a 'consumer' as *"any natural person acting for purposes outside his trade, business or profession."*

In this case, the payments were made by Mr R and I'm not satisfied that Mr R was acting outside his trade, business or profession. I say this because the investment contracts that relate to the payments made from Mr and Mrs R's joint account are in the names of B or P. Mr R has also confirmed that for accounting purposes, these investments were considered to be made on behalf of B and P.

On that basis, I'm satisfied that Mr R made these payments in his role as a director of B and P, not in his personal capacity. And, he was not acting outside of his trade, business or profession. So, Mr R doesn't meet the tests definition of a 'consumer'.

As both tests haven't been met, Mr and Mrs R don't meet the definition of eligible complainants, and we cannot consider their complaint in relation to these payments.

### Payments 8, 9 and 10

As payments 8, 9 and 10 were to set up investments in Mr and Mrs R's personal names, I'm satisfied that they meet the definition of eligible complainants and I can consider their complaint in relation to these payments.

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 and Mrs 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 and Mrs R were the victims 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 and Mrs R first raised their 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 and Mrs 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 and Mrs 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 and Mrs R under the provisions of the CRM Code.

#### Are Mr and Mrs 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 and Mrs R made payments 8, 9 and 10, meet the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr and Mrs 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 and Mrs 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 and Mrs R were making payments to C as part of an investment. Based on the evidence that Mr and Mrs R had available at the time, there isn't anything to suggest they 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 and Mrs 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 and Mrs 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 and Mrs 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 and Mrs R's payments meet the definition of an APP scam and are covered by the CRM Code.

The CRM Code says that Mr and Mrs R are 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 and Mrs R had a reasonable basis for believing the investment was legitimate. I say this because they heard it advertised on the radio, which lent it an air of authenticity. Also, Mr and Mrs R saw positive reviews from other investors and 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 and Mrs R made their payments in September 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 and Mrs R made these payments and haven't provided evidence of any warning being presented at the time.

As NatWest haven't evidenced that an effective warning was presented, I can't fairly say that Mr and Mrs 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 and Mrs R are entitled to a refund of their outstanding loss. Payments 8, 9 and 10 total £42,000 and I can see Mr and Mrs R received returns of £802.08 in October 2020, November 2020, December 2020 and January 2021. This means they received back £3,208.32 and their outstanding loss is £38,791.68.

### The interest award

Prior to the SFO completing their investigation, Mr and Mrs R's payments 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 and Mrs 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 and Mrs R are now complaining to us about in connection with the activities of C.

As I have determined that this complaint should be upheld Mr and Mrs R should know that as they will be recovering compensation from NatWest, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount recovered from NatWest they 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 and Mrs R have already made a claim at FSCS in connection with C, and in the event the FSCS pays compensation, Mr and Mrs R are required to repay any further compensation they receive from their 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 PUBLIC LIMITED COMPANY to:

- Refund Mr and Mrs R £38,791.68, 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 and Mrs R how much it's taken off. It should also give Mr and Mrs R a tax deduction certificate if they ask for one, so they 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 PUBLIC LIMITED COMPANY and require them to compensate Mr and Mrs R, as set out above.

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

Lisa Lowe  
**Ombudsman**