

The complaint

Mr and Mrs W complain that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ("NatWest") won't reimburse them after they fell victim to an authorised push payment (APP) scam.

What happened

In October 2019, Mr and Mrs W invested £20,000 in a company I'll call 'D' who said it was investing in property development. They were introduced to D by a family member who they say had met one of the directors at various industry forums and events.

In March 2021, Mr and Mrs W invested a further £50,000 in D. They say they realised it wasn't a genuine investment opportunity when it got into financial trouble. D appointed an administrator in mid-2022.

Mr and Mrs W complained to NatWest in March 2024 and asked it to reimburse their funds under the Lending Standards Board (LSB)'s Contingent Reimbursement Model (CRM) Code ("the Code"). NatWest said this was a civil dispute between them and D, so they weren't covered under the Code.

Our investigator upheld Mr and Mrs W's complaint and recommended NatWest to refund the two payments, as well as the £23 fee that the bank charged for processing one of the payments. Mr and Mrs W accepted the outcome, but NatWest disagreed. It maintained that this was a civil matter, and D was operating legitimately at the time Mr and Mrs W invested. So, the case 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.

When considering what is fair and reasonable, I'm 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 account. 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's a voluntary code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. NatWest was a signatory to the Code at the time the payments in dispute were 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 by 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."*

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

The LSB has said that the CRM Code doesn't 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 this complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it's more likely than not that Mr and Mrs W were the victims of a scam rather than this being a failed or a bad investment.

Have Mr and Mrs W been the victims of a scam, as defined in the CRM Code?

The Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't 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 don't consider the first part of the definition quoted above (DS1(2)(a)(i)) is met in this case. This isn't in dispute. But what is in dispute is whether Mr and Mrs W's payments meet DS1(2)(a)(ii). So, I've gone on to consider if their intended purpose for the payments was legitimate, whether the intended purposes they and D had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of D.

From what I've seen and what Mr and Mrs W have told us, I'm satisfied that they made the payments with the intention of investing in property development. I haven't seen anything to suggest that they didn't 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 genuine investment.

The evidence before me suggests that when D first started, it was involved in property development, although it's not clear if all funds received were used for this purpose. But by the time Mr and Mrs W became involved with it in October 2019, it was no longer operating in this same way.

From the spring of 2019, large sums were regularly being withdrawn for the benefit of D's directors and other funds were used to pay returns to existing investors. And by 2021, D also had links to another company which our Service considers was most likely running a Ponzi forex investment scheme. D's investors' funds were diverted to accounts with this company, despite it purporting to offer a very different and much higher risk investment than what they had agreed to with D.

Our Service is also aware that D's directors and this other company's directors formed a new company together at the same time as D's behaviour changed in 2019. So, this strongly indicates that D wasn't just choosing to invest some of its investors' funds in a different investment – which would still have issues as explained above. But instead indicates that D and this other company were working together at this time.

Although Mr and Mrs W didn't receive any returns, I'm aware that some investors did. But I'm also aware that other investors' funds were used to pay returns. And 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.

Even if any of Mr and Mrs W's funds were used for the intended purpose of property development, given what I've said above, I'm satisfied that D was, most likely, operating a sophisticated scam. I consider it most likely D's purpose for the funds was different to what Mr and Mrs W understood and intended. And that this was because D intended to dishonestly deceive them and took the funds for a fraudulent purpose. As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Are Mr and Mrs W 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 Mr and Mrs W. 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 has explained that both payments were made in branch, and its staff completed a protection form each time and recorded the reason for proceeding. The bank says the branch staff provided Mr and Mrs W with warnings regarding scams and fake investments.

Having reviewed the content of the disclaimer on the form that NatWest suggests the branch staff would have read out to Mr and Mrs W, I can see it provides generic information which can apply to more than one type of scam risk. In the circumstances of this case, I consider an Effective Warning to be one which is aimed at trying to reduce the prospect of an investment scam involving property development. The disclaimer wasn't specific to the type of scam Mr and Mrs W had fallen victim to, nor did it provide the key features of an investment scam more generally. Therefore, it follows that Mr and Mrs W can't be fairly said to have ignored an Effective Warning.

As part of its submission to our Service, NatWest hasn't indicated that it considers Mr and Mrs W didn't have a reasonable basis for belief. I also don't consider this to be the case. D was genuinely registered at the time Mr and Mrs W invested and there wasn't concerning information publicly available at this time. Mr and Mrs W were also introduced to the

investment by a family member who had met one of D's directors on several occasions at industry forums and events, which would've given it credibility. In addition to doing their online research, Mr and Mrs W also joined a WhatsApp group about D to hear first-hand testimonials from other investors. So, I'm satisfied that Mr and Mrs W P did have a reasonable basis for belief and so, even if NatWest had sought to apply this exception, it wouldn't apply.

I can't see that any other exceptions to reimbursement could apply in this case. And as NatWest hasn't established that any of the applicable exceptions to reimbursement under the Code do apply here, I'm satisfied it should refund the money Mr and Mrs W lost in full.

Putting things right

I don't think any intervention I reasonably would've expected NatWest to carry out would have prevented Mr and Mrs W from making the disputed payments. This is because I don't think any of the information that I would've reasonably expected the bank to have known or indicated to them to research at the time of the payments would've uncovered the scam or caused significant concern.

As I consider that NatWest should have accepted Mr and Mrs W's claim and reimbursed them under the provisions of the CRM Code, the bank should now pay 8% simple interest per year on the refund due from the date it declined their claim instead.

The investigator asked NatWest to also refund the £23 fee the bank charged to process one of the scam payments. The bank hasn't disputed that it should refund this. Considering what's fair and reasonable in the circumstances, I think NatWest should refund this amount as well.

Therefore, in order to put things right for Mr and Mrs W, NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY needs to:

- Refund Mr and Mrs W £70,000 they lost from their NatWest account as a result of this scam;
- Refund the £23 charge; and
- Pay 8% simple interest per year on the refunded amount, from the date the bank declined the claim in March 2024 until the date of settlement.

As D is going through insolvency proceedings, it's possible that Mr and Mrs W may 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 the rights to all future distributions in respect to the payments made from Mr and Mrs W's NatWest account under this process before paying the award.

My final decision

My final decision is that I uphold this complaint. I require NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY to put things right for Mr and Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 5 November 2025.

Gagandeep Singh
Ombudsman