DRN-5807095

The complaint

In February 2021, a limited company, which I'll refer to as H made a £20,000 payment from its account with NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ('NatWest') in connection with an investment opportunity.

Mr H and Mr M, who are directors of H, bring the complaint on H's behalf.

Mr H and Mr M now consider the investment opportunity to be a scam. They complain that NatWest won't refund the money H lost to an authorised push payment ("APP") scam.

Third parties

Several third parties feature in the events I shall describe. I don't need to identify them by their names, and I shall refer to them as follows:

B – a licensed and regulated producer of cannabis for medicinal use in the overseas jurisdiction.

P – a lighting technology company incorporated in the UK in September 2017. Currently in liquidation. P acquired a 20% stake in B and told investors it sought funding to provide proprietary plasma lighting to B for the cultivation of cannabis on a site in the overseas jurisdiction that P had leased ("the project"). My reference to P also includes linked companies that were incorporated in the UK to take on different roles in the project.

C1 – a company set up by P in the overseas jurisdiction to manage the leased site.

X – the main director of P. Made bankrupt for the first time in July 2017. Discharged 12 months later. Made bankrupt for a second time in September 2023.

K – a lighting technology company that X was a director of between 2009 and 2016. It went into administration in February 2020.

H1 – a third-party UK-based pharmaceutical company licensed to cultivate medical-grade cannabis in the UK.

P1 – incorporated in August 2021 by the directors of P, P1 was set up to supply P's proprietary lighting equipment to H1.

What happened

In early 2021, Mr M was introduced to P as a potential investment through a friend he'd known for over 40 years. The proposed investment was to loan funds to P for the project in return for acquisition of shares. P would repay the loan after a minimum term of 12 months. Mr M's friend had already invested money in P and had also received some returns. And prior to H investing, it had carried out its own due diligence into P such as checking Companies House and looking into the directors of the company. H was satisfied it all looked genuine and legitimate and decided to invest.

Prior to the expected loan repayment, shareholders were provided an update from P on the projects progress. P also provided a further opportunity for investment from existing investors.

But by May 2022, P contacted shareholders about challenges it had faced with raising sufficient funding and it therefore had to consider an offer of funding from potential new owners. It explained what this would mean to existing shareholders and what options were available to them.

Concerns began to arise among other investors in P. And by November 2022 those concerns resulted in a belief P was a scam. And in March 2023, H contacted NatWest to make a claim requesting a refund in relation to the losses it had with P. NatWest initially responded advising that due to police involvement in the case, the bank were delaying their response whilst the police complete their investigation. And in September 2023, NatWest provided a response rejecting H's complaint.

H brought its complaint to this service. In its submissions, NatWest explained that they would not consider P to be a scam, but instead a bad investment and that H would need to instead contact trading standards to raise a case for investigation with the company.

Our investigator considered all the relevant information available to them and concluded NatWest should provide H with a full refund along with interest. In summary, she said that:

- NatWest was a signatory to the Contingent Reimbursement Model ("CRM Code")
- And having reviewed the case under the CRM Code, she was satisfied H was entitled to a full refund.
- She disagreed that P was a bad investment, but rather found there was sufficient evidence that persuaded her P met the definition of an APP scam as set out in the CRM Code.
- H had a reasonable basis for believing it was making a genuine payment towards a genuine investment opportunity.
- NatWest has been unable to establish H ignored an effective warning.
- She hadn't seen anything that suggested H ignored its own procedures for approval of payments or that those procedures would have been effective in preventing the APP scam.

H accepted the investigator's findings, but NatWest advised that it could not provide an outcome due to R3(1)(C).

Our investigator responded further to NatWest advising that its initial submissions had shown that NatWest had decided P was a bad investment and not a scam. In any event, she considered further whether it was fair for NatWest to rely on R3(1)(C). And in this case she disagreed, advising that she was satisfied there is sufficient evidence available as she had outlined in her original view for NatWest to reach a conclusion about whether H should be reimbursed under the CRM Code, and the outcome of the police investigation, if and when there is one, isn't likely to have an impact on that. As such she was satisfied it was appropriate to consider H's complaint.

As an agreement couldn't be reached on the resolution of H's complaint, it's now been passed to a 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: the 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 firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (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

The CRM Code was voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. NatWest was a signatory to the CRM Code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment in question, on the balance of probabilities, meets the CRM Code's definition of an APP scam.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code, at section DS1(2)(a), as:

> *"a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulations 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) of the CRM Code says:

> This Code does not apply to:
>
> …
>
> *(b) private civil disputes, such as where the 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 doesn't provide a definition for "fraudulent" purposes. Therefore, it ought to get its natural meaning in the context in which it is being used. Having thought carefully about that, I'm satisfied that the CRM Code is intended for customers to be reimbursed where they have been dishonestly deceived as to the purpose for which their payment was being obtained.

Section DS2(2) makes it clear that "private civil disputes" between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. This shows that a dispute which could only be pursued in the civil courts as a private claim isn't an APP Scam. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the

legitimate purpose for which the payment was made.

That doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof ("beyond reasonable doubt"). Indeed, I understand that the CRM Code's publisher, the Lending Standards Board, has provided guidance that the criminal standard isn't required. In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases.

However, at the heart of the CRM Code is the requirement for the customer to have been the victim of fraud. And so, I would need to see evidence that convinces me, it's more likely than not, that a criminal fraud has occurred, and therefore that H has lost his money to an APP scam.

If I conclude, on the balance of probabilities, that the payment in question meets the definition of an APP scam, as defined above, then H would be entitled to reimbursement unless NatWest is able to show that any of the CRM Code's exceptions at section R2(1) apply.

Can NatWest delay making a decision under the CRM Code?

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. NatWest explained no outcome had yet to be determined as a result of the ongoing police investigation. It set this out in both its final response letter to H and its submission to this service.

That said there was some commentary from NatWest that had also suggested it had made a decision that H was a bad investment. It provided links showing the companies were registered on Companies House and directed H to speak to trading standards. From this one could interpret (just as our investigator did) that NatWest had made a decision and consider this a civil dispute.

But whether NatWest have made a decision that H's investment into P amounts to a civil dispute or are instead choosing to rely on R3(1)(C), this does not impact H's ability to bring its complaint to this service for consideration. Nor does it impact this services' ability to provide an outcome if we consider we have sufficient evidence to reach a fair and reasonable outcome.

Is it appropriate to determine H's complaint now?

Nevertheless, I do think it's right that I should consider whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still on-going although its progress is unknown. And I also understand that the liquidator'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 based on evidence already available. And it may be that 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 of 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).

A police investigation has been ongoing for some time now, but for the reasons given above, I remain satisfied that I don't need to await the outcome of that investigation to make a fair and reasonable determination of this complaint.

In order to determine H'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 H was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination I if consider fairness to the parties demands that I delay doing so.

I'm aware that H first raised its claim with NatWest in March 2023 before bringing its complaint to this service in August 2023, and I need to bear in mind that this services is required to determine complains quickly and with minimum formality. With that in mind, I don't think delaying giving H an answer for an unspecified length of time would be appropriate unless the delay is truly required for the sake of fairness to both parties. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware that P is under liquidation. This might result in some recoveries for P's creditors, or even theoretically its shareholders. It's unlikely that victims of this scheme (as unsecured debtors) would get anything substantive if there are secured creditors, given recoveries would initially be for any secured creditors. That said, 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 H under the liquidation process in respect of this £20,000 investment before paying anything I might award to it on this complaint.

For the reasons I address further below, I don't think its necessary to wait until the outcome of a statutory body investigation for me to fairly reach a decision on whether NatWest should reimburse H under the provisions of the CRM Code.

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

As referenced above, NatWest was a signatory to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM 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 payment made for a genuine investment that subsequently failed.

As there's no dispute that H's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, H must have transferred funds to P for what he believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

I've therefore considered whether or not H's intended purpose for the payment was legitimate, whether or not the intended purposes of H and P were substantially aligned and, if not, whether or not this was the result of dishonest deception on the part of P.

H lent £20,000 to P in February 2021 which he believed would be used for funding its project. He understood his loan would be repaid after 12 months. In return he also understood he had acquired shares in P. H was introduced to P as a potential investment through a friend of Mr M's that he'd known for over 40 years and who'd already invested. Prior to investing H was provided with brochures and projections which looked professional. He also received a loan agreement with P. I'm satisfied that at the time of making his payments to P, H fully believed that it was for a legitimate purpose.

I've then considered whether there is convincing evidence to demonstrate that P's purpose of the payment was fraudulent. That is, whether P's purpose must have been to misappropriate H's funds or otherwise deprive her of her money, rather than to use it for the purpose believed by H.

I've carefully reviewed the liquidator's findings. The following observations they've made are of particular relevance to this complaint:

- Following P's incorporation in September 2017, while an undischarged bankrupt, X acted as a de facto director of P and promoted the company as a successor to K. X was appointed a director of P in June 2018, prior to his discharge from bankruptcy. As an undischarged bankrupt, X was prevented from being involved in the formation or management of any company.
- Between September 2017 and July 2018, when X was an undischarged bankrupt, nearly 34% of the investor's money was drawn out by X via another company he was a director of, or to his personal account, or otherwise applied towards lifestyle spend.
- Between March 2018 and July 2019, X made rental payments every month in respect of the property he and his family were living in. And between September 2018 and September 2019, nearly 32% of investments into P were applied towards purchasing that property.
- Between January 2020 and April 2020, repayments to investors were made which were drawn from new investor funds. The pattern of using new investor funds to repay historic investors continued subsequently.
- Although the company records and financial records do provide some evidence of legitimate business spending, no evidence of any technology has been provided. No technology or intellectual property has been located.

Given the substantial size of these payments, the fact that they preceded H's investment, and X's misconduct as a bankrupt, I consider this is powerful evidence that P's true role was to dishonestly raise money from investors in order to fund X's lifestyle and make repayments to earlier investors.

I've also seen email evidence from another investor of P which shows one of the former directors of B stating it had significant funding problems with P, from as early as November 2019. The email goes on to say that by that point, B had used all its capital and had committed $2.5 million. It no longer controlled the land and had difficulties raising additional funds. Although P promised to lend it $1 million, that funding never arrived. The site was left in a state of disrepair, and B in ruins. B's former director concludes the email by saying he believes that P was set up as an investment fraud, given the initial contract signed by both parties for the project was never funded.

A review of bank statements of P's account from the relevant time supports B's claim that the promised sum wasn't sent. From what I've seen, I can only identify around £83,000 being sent to B during the relevant period.

This leads me to conclude that P had no intention – by the time of H's payment – to fulfil its obligations to B in relation to the project, and therefore it also had no intention to use H's funds as it had led her to believe it would. Instead, based on what the liquidator has noted, it appears that H's funds were used largely for X's personal benefit and repayments to earlier investors.

I've also seen evidence of an email from another investor which was received from the general manager of the company that P, through C1, engaged with in 2018 to carry out construction at the leased site. The email states that the said company experienced multiple delays in receiving payments, and in early 2021 it was asked to stop all work immediately and leave the site. At the time, construction hadn't finished, and the site didn't have electricity or water. The general manager also states that to his knowledge, the site has never had any grow lights installed, nor grown cannabis.

An email from B's former director to another investor corroborates that evidence, stating that lighting was never provided, nor cannabis grown on the site.

The information provided by the third parties which I've mentioned above is completely at odds with the letter P sent to shareholders in November 2021 which included 'sensitive' images of the 'up and running' facility, one of which purported to show the cannabis flower cultivation grow room. It's alleged by another investor these images were taken from third-party websites, and links have been provided in support of this. I've reviewed these website links, and I find that they do support this allegation. While P's newsletter was written after H made his investment, I do consider it relevant to the extent that it provides evidence of P's willingness to deceive investors about the use of their funding.

Further (again subsequent) evidence of X's dishonest business practices has been provided to me. I understand that in 2021, P agreed to make a payment of £2.5 million to H for the deal it had entered into – through P1 – to supply P's proprietary lighting in return for a percentage of H's revenue. When the funds didn't arrive, X claimed to have sent it and provided a screen shot of the payment confirmation to evidence this. I've seen a copy of the payment confirmation screen. I've also reviewed the bank statement of the account that money was alleged to have been sent from. Having done so, I can't see the payment in question leaving the account.

Moreover, the account balance on the day in question stood at around £80,000. So, it's unclear how P could have made a payment of £2.5 million to H1. I've seen an email from the police to another investor where they have confirmed that none of the accounts held by P, connected companies, or X, had a balance that could have cleared that payment. I consider that this evidence supports a conclusion that X and P were more than capable of the level of dishonesty required for an APP scam such as the one H alleges it fell victim to.

The police have also said that they can see very little of the funds received from investors being invested back into the company; most of it was spent on X and his family's lifestyle. Overall, after having carefully considered the information from the liquidator and H, and given the findings I've made above, I'm persuaded that P's purpose was not aligned with what H believed when it made the payment in February 2021. H made the payment to provide a loan to P believing its purpose was to fund the cannabis cultivation project, whereas, in truth, P had the dishonest intention of diverting a substantial part of the money to support X's lifestyle, repay earlier investors, and, as and when necessary, deceiving investors that P was establishing and conducting viable business operations.

So, I think the circumstances here meet the definition of an APP scam as set out under the CRM Code.

Returning to the question of whether in fairness I should delay reaching a decision pending developments in the liquidation or police enquiries, I've 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. The liquidators have already expressed their views. And as regards to the police's investigations, there's no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on the evidence and issues I've discussed.

Is H entitled to a refund under the CRM code?

Under the CRM Code, the starting position is that a firm should reimburse a customer who has been the victim of an APP scam, like H. The circumstances in which 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 sets out those exceptions and stipulates that the assessment of whether they can be established should involved consideration of whether they would have had a material effect on preventing the APP scam that took place.

Whether I conclude NatWest has made a decision on H's scam claim from its comments – amounting to P being a civil dispute, or whether it stands by not having yet made a decision, its unclear if it considers whether any of the exception to reimbursement apply. And in the absence of this, I've considered whether I think it's more likely than not NatWest could fairly rely on any of the exception in this case.

Section R2(1) of the CRM Code states that a firm may choose not to reimburse a customer if it can be established that the customer ignored effective warnings given by a firm. And where a micro-enterprise (such as H) is bringing the complaint, whether or not it followed its own internal procedures for approval of payments, and where those procedures would have been effective in preventing the APP scam'. It also states that a firm may choose not to reimburse a customer if it can establish that, in all circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the payments without a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate.

There are further exceptions within the CRM Code, but they're not relevant to the facts in this case.

The disputed transactions were carried out by H through online banking. In its submissions to this service, NatWest confirm H was required to select the payment purpose and informed us that investment was selected. And in doing so, NatWest explained H was presented with the following warning:

> *Does this investment offer returns that seem too good to be true? STOP – it's likely a scam*

Beware of investment opportunities that offer a high return with little or no risk, this could be a scam.

Make safe investments by:

- *Take the Financial Conduct Authority Scam Smart test and check the company is listed or has no warnings against it*
- *Visit Take Five a trusted organisation that provides guidance on how to stay safe from fraud and scams.*

The CRM Code sets out that "Effective Warnings should be risk based and, where possible, tailored to the APP scam risk indicators". It also sets out minimum criteria that a warning must meet to be an 'Effective Warning' and this includes the warning being 'Clear', 'Impactful' and 'Specific'.

Having reviewed the content of the warning NatWest says was presented to H, I don't consider it to meet the standards of an Effective Warning under the Code. I'm not satisfied it was sufficiently tailored or impactful to positively affect H's decision-making whereby the likelihood of the APP scam succeeding would be reduced. The warning only addresses concerns around returns that might be too good to be true, or that offers high returns with little to no risk with no other variations or factors taken into account. The warning also doesn't make clear what might be considered too good to be true – for example the rate of return and term, or the promise of guarantees and security. And when it does go on to address what checks H could undertake about investment companies, the suggestion of taking the Financial Conduct Authority Scam Smart test here would not have been relevant as in H's case the offering by P was an unregulated investment. And in fact H did check whether P was listed on Companies House.

In light of the above, I can't fairly say H ignored an effective warning. And in any event, even if the warning had been effective, based on what was known about P at the time of the payment, I don't think it would have been unreasonable for H to make the payment despite a warning.

In considering whether H had a reasonable basis for belief, I'm in agreement with our investigator. The investment material I've reviewed appears professional, genuine and above board. There was also nothing in the public domain at the time about P from which H could have reasonably inferred that a scam was taking place. Furthermore, H was introduced to the investment opportunity in P through a long term friend of Mr M who had already invested.

Therefore I'm satisfied H had a reasonable basis to believe the payments it made totalling £20,000 was for a genuine investment and that P was operating legitimately.

I'm also in agreeance with our investigator that I've not seen anything to show that H ignored its own procedures for approval of payments or that those procedures would have been effective in preventing the APP scam.

Overall, as I don't think NatWest has established that any of the exceptions to reimbursement under the CRM Code apply here, it should refund the money H lost in full.

Putting things right

I've thought carefully about whether interest should be added to the refund H is due from NatWest. Having considered the available information, including submissions from third parties which I consider the bank could have obtained if it wanted to when it received H's claim, I consider that NatWest should have reimbursed H when he first made his claim in

March 2023 under the Code. As such, I think it is fair and reasonable that NatWest add interest to the refund from 15 business days after it received H's scam claim to the date of settlement.

Outside the provisions of the CRM Code, I consider it unlikely that any intervention by NatWest at the time of the payment would have positively impacted H's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about P such that H would have chosen not to proceed.

With that in mind, in order to put things right, NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY needs to:

- refund H the disputed payments totalling £20,000 made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded, calculated from 15 business days after the date the bank first received H's claim (in March 2023), to the date of settlement

As P is under the control of administrators and there's an on-going Police investigation, it's possible H may recover some further funds in the future. In order to avoid the risk of double recovery, NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY 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 NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY is legally required to deduct tax from the interest award, it should tell H how much it has taken off. It should also give H a tax deduction certificate if she asks for one, so she can claim it back from HMRC if appropriate.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY to put things right for H as set out above.

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

Mark O'Connor
Ombudsman