

The complaint

Mr M, the director of J, complains on J's behalf, claiming that it lost funds through an investment scam and that its bank, National Westminster Bank Public Limited Company ('NatWest') has decided not to refund J's losses.

J is professionally represented in bringing its complaint to our service, but for ease of reading I'll refer to all submissions as being made by J directly.

What happened

J has explained it received contact from an unregulated advisor regarding an opportunity to invest in a holiday development. Mr A understood he would be purchasing a lodge for £104,950, and that he would be receiving annual returns of 8% per year for five years, after which the developer, who I'll refer to as 'A'. would buy back the lodge from J for 10% more than its initial purchase price.

J sent funds from its NatWest account in June 2023 and received returns as expected until April 2024. However, after this, J received excuses as to why nothing further had been received. A entered into administration shortly after this and there is now an active police investigation.

Believing it had fallen victim to a scam, J raised a complaint with NatWest. NatWest considered the complaint but didn't uphold it, as it didn't think a banking error had occurred. J brought the complaint to our service. One of our Investigators looked into the complaint but didn't uphold it. He didn't think there was sufficient evidence to conclude that A had intended to defraud J of funds, rather than this being a failed investment.

J disagreed with the investigator's opinion. It provided detailed responses on why it considers the evidence supports that this was not a civil dispute, but a scam from the outset.

As J remained unhappy with the investigator's outcome, the complaint has been referred 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.

I'm aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focused on what I think is the heart of the matter here – which is to determine whether there is sufficient evidence to conclude that a scam has taken place (and in any event, whether NatWest should be liable for any losses). If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

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.

In broad terms, the starting position at law is that a bank such as NatWest is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Here it's not in dispute that the payments were authorised, so the starting position is that NatWest isn't liable for the transactions.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Taking this into account, I need to decide whether NatWest acted fairly and reasonably in its dealings with J.

Has J fallen victim to a scam?

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.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *“another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

The Code also explains that it 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.*

In order to reach my decision, I've therefore thought about what J's intended purpose for making these payments was, whether this broadly aligned with that of A's and if not, whether this was the result of dishonest deception.

It's not in contention that J's purpose for making these payments was as an investment in the development of a lodge. I've therefore thought about what evidence there is available for what A's intentions were.

In reaching a finding, I've had to bear in mind the following:

- It is my understanding that development sites used *were* owned by A. While some investor payments were received prior to land being actually acquired, I don't think it's unusual for developers to raise funds first.
- A appeared to have entered into a joint venture with another firm I'll refer to as B. However the validity of this venture has since been the subject of a dispute between the two parties and was heard at the High Court, prior to A entering administration.
- While I'm aware that Police have made arrests on suspicion of fraud and money

laundering, there's little further information known about this. For example, it's not clear if those arrested are linked to A or B, and whether the evidence being relied on from the Police supports that either was fraudulent from the outset, or at a later point in the investment process. Even if later evidence does conclude that directors of A have been found guilty of fraud, this would not automatically mean that J has been the victim of a scam, given any given activity found to be fraudulent may be unrelated to the procurement of funds, and instead relate to other activities carried out by A.

- Account information I've seen for A appears to support the notion that A was carrying out activity consistent with the development project.
- Considering the apparent breakdown in business venture between A and B, it seems possible that this is the reason for J's investment collapsing, rather than an intent to defraud. I can't say, based on evidence currently available, that it's more likely that A intended to scam J from the outset.
- J has provided submissions to support that he was mis-represented the investment. While both A and advisors may have mis-represented elements of the investment, that does not necessarily amount to an APP scam. As mentioned, I would need to also be satisfied that any mis-representation was made with the intent to defraud - rather than to procure business, albeit in an underhand manner, but with the intent nevertheless to fulfil the agreement.
- J has provided a view from A's administrator that he considers supports that this was a scam. While I accept the administrator confirms he thinks this has hallmarks of 'a possible fraud' it's also the case that he hasn't yet been able to establish a full picture of what happened to investor's funds after investing.

Therefore, while this is clearly a complex matter, where ongoing investigations may uncover new evidence in future, given the scale of these investigations and the possible outcomes still at play I can't currently reach a conclusion that J has been the victim of a scam.

In saying this, I don't wish to downplay or diminish the impact this must have had on J – and I appreciate a large amount of money has been put into this investment in good faith. However, the evidence currently available doesn't lead me to conclude that A never had any intention of completing the developments in question and paying J's agreed returns. I'm therefore not satisfied that J's claim meets the definition of an APP scam under the CRM Code.

Lastly, for completeness, I've considered whether NatWest could've done any more at the time of the payments being made, in order to prevent J's loss.

I've not seen evidence to suggest that NatWest intervened on the payments, further than providing an on screen warning to J, prior to releasing them. But, even if NatWest had discussed the payments with Mr M by phone prior to their release, I'm not persuaded that the information he'd have presented would've suggested that J might be at risk of financial harm, based on being unable - even with the luxury of hindsight - to determine that this was a scam. So, I can't fairly say NatWest could've prevented J's loss at the time.

Therefore while I'm sorry to disappoint J, I can't fairly say NatWest should reimburse its loss under the CRM Code. Should any material new evidence come to light at a later date, for example from the police or the administrators, J can ask NatWest to reconsider its claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 8 January 2026.

Kirsty Upton
Ombudsman