

## The complaint

The estate of Mr S complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ('NatWest') won't refund the money they say was lost as the result of a scam.

Mr S's sons bring the complaint on behalf of Mr S's estate.

## What happened

Mr S1, (one of the late Mr S's sons), says the late Mr S was called in 2018 by a company offering investment opportunities. As a result, the late Mr S made a number of payments from his NatWest account.

This complaint deals with the payments made to a company I'll refer to as X.

These are the payments made to X. The payments made to T were made as part of the investment with X.

Date	Pmt	Details of transaction	Amount
16.3.2018	1	Payment to T	£10,000
12.4.2018	2	Payment to T	£15,000
20.6.2018	3	Payment to X	£15,000
21.6.2018	4	Payment to X	£10,000
1.6.2021	5	Payment to X	£5,000
12.5.2022	6	Payment to X	£5,000

In March 2020, the late Mr S and Mr S1 called NatWest as Mr S1 thought the prior payments had been made as a part of a scam. NatWest recommended that they call the company (X) to see if it was a genuine investment and call back if they wanted to raise a scam claim. As they didn't receive a call back, NatWest didn't raise a scam claim.

The late Mr S received regular returns on his investment until 2021. But there were no further returns paid and the capital wasn't returned.

A scam claim was raised with NatWest in November 2022. NatWest declined to refund the late Mr S, saying he had a civil dispute with X as it appears to have been a genuine investment.

Unhappy with NatWest's response, a complaint was brought to our service.

An investigator looked into the complaint but didn't uphold it. The investigator wasn't satisfied that intervention by NatWest when the first four payments were made in 2018, would've prevented the late Mr S's loss. And, while last two payments were made after the introduction of the Contingent Reimbursement Model Code (CRM Code), the investigator wasn't satisfied that there was evidence to support X being a scam. And if NatWest had intervened on the last two payments, they weren't convinced the loss would have been prevented. The investigator didn't feel that the late Mr S's circumstances meant that he was

vulnerable, whereby NatWest could reasonably have refused to follow his payment instructions.

Mr S1 disagreed with the investigator's opinion and raised the following points:

- The late Mr S was vulnerable when he made the payments as he was 82 and recently bereaved. NatWest failed in its duty to protect him.
- NatWest should've been concerned following the call in 2020, when Mr S1 suggested that payments had been made as part of a scam.
- Intervention by NatWest would've prevented some of the payments.

As the case couldn't be resolved informally, it was passed to me to review.

### **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, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been 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 more likely than not to have happened in light of the available evidence.

In broad terms, the starting position at law is that a bank 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. It's not in dispute that the late Mr S authorised these payments, although he did so not realising he would suffer a financial loss.

#### The payments made in 2018

The CRM Code wasn't introduced until May 2019 and can't be applied retrospectively, so I can't apply it to these payments.

But, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider NatWest should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect NatWest to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do.

I'm satisfied that the first payment the late Mr S made in March 2018, was unusual and out of character for his account. He had previously issued a cheque in November 2017 for £8,250 and one in July 2017 for £21,052, but this wasn't usual activity on his account and were one-off payments. His account was generally used for lower value payments. So, I

would've expected NatWest to have intervened and asked the late Mr S questions about the payment purpose.

However, even if NatWest didn't intervene when I think it should've, that doesn't necessarily mean that the late Mr S is entitled to a refund. I have to consider what I think is likely to have been the conversation and whether I think that would've prevented the late Mr S's loss.

Mr S1 doesn't have any evidence of checks the late Mr S did prior to making these payments, but the late Mr S said he checked the company's website and also checked Companies House. Companies House shows that X was a UK incorporated company since 2016, which was active when the late Mr S made his payments in 2018. We've been given a copy of X's marketing material, although it's not clear if this was provided prior to the late Mr S's payments in 2018. But the marketing material is professional and looks legitimate – which supports the late Mr S's claim that the website looked professional. I'm also aware that X said they were affiliated with T, whom two of the payments were made to, and T are FCA authorised.

I appreciate that Mr S1 feels the late Mr S was vulnerable at the time he made the payments, but I can't see that NatWest was made aware of his vulnerability other than being aware of his age.

If NatWest had asked questions about the investment, what information the late Mr S had about the company and what checks he had completed – I'm not persuaded that I can say it's more likely than not they would've been concerned or could've fairly refused to follow his payment instructions.

I haven't seen any evidence that suggests X was a scam or that it wasn't operating legitimately at the time the late Mr S made these payments. NatWest may've recommended that the late Mr S check the FCA's website, however X weren't offering a regulated product, so they weren't authorised by the FCA – which was explained in their marketing material. And, as previously mentioned, T were FCA authorised. Just because an investment isn't regulated, doesn't necessarily mean that it's a scam.

Also, while NatWest could and should make suggestions on checks that the late Mr S could complete to ensure the legitimacy of the company and the investment, there isn't a requirement for NatWest to provide investment advice about the suitability of the investment.

As I'm not satisfied that NatWest were aware of the late Mr S's vulnerabilities, I can't fairly say they should've taken any additional steps to protect him. I appreciate that the late Mr S was over 80 when he made these payments, but NatWest can't refuse to follow a customer's payment instructions purely based on their age. Especially when I'm not persuaded that the information the late Mr S would've given them about the investment would've suggested that he was at risk of financial harm from fraud.

It's worth noting that when the first four payments were made, there wasn't a Power of Attorney in place. So, there wasn't another signatory on the account that NatWest could've contacted about the payments.

Based on the evidence, I'm not satisfied that I can fairly say NatWest's intervention in 2018 would've prevented the late Mr S from making the payments or prevented his loss.

#### The payments made in 2021 and 2022

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 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 the late Mr S made his payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether the late Mr S thought this purpose was legitimate.
- The purpose the recipient (X) had in mind at the time of the payments and whether this was broadly in line with what the late Mr S 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.

The late Mr S was making the payments as part of an investment in X. Based on the information the late Mr S had, there was no reason for him to think this wasn’t a legitimate purpose.

So, I’ve gone on to consider what purpose X had in mind and whether it was in line with what the late Mr S thought.

In reaching an answer on what purpose X had in mind, the key information to this case is:

- X was a UK incorporated company, set up in July 2016, and is still active. There was a notice for compulsory strike-off issued in May 2022, but this was suspended in June 2022. This suggests that X was a genuine company when the late Mr S made his payments.
- There isn’t any evidence that shows the late Mr S’s payments were obtained or used for a different purpose. I appreciate that this information will be difficult for the estate to obtain, but it is usually available following an investigation by an external organisation like the Police or Trading Standards.
- We’ve received information from the receiving bank, but I’m limited as to what information I can share under data protection legislation. I can confirm that the funds were paid to the intended recipient, and the receiving bank deemed it a civil dispute. The evidence I’ve seen doesn’t support that the late Mr S made his payments as the result of an APP scam.
- If material new evidence comes to light at a later date, which shows that the funds weren’t used for their intended purpose or that X was operating a scam, the estate can ask NatWest to reconsider their claim.
- It’s possible that X have failed for genuine reasons, like financial difficulties or mismanagement. Neither of these reasons would mean that the late Mr S’s payments are covered by the CRM Code.

Based on the evidence I’ve seen, I’m not satisfied that it’s been proven X had a different purpose in mind for the funds or that they obtained them through dishonest deception. On that basis, the late Mr S’s payments aren’t covered by the CRM Code.

But, even if the payments aren’t covered by the CRM Code, I also need to consider whether there is any other reason that NatWest could be held liable.

As with the payments made in 2018, there is an expectation on NatWest to monitor accounts for unusual and out of character payments. And, where a potential risk of financial harm is identified, to intervene and attempt to protect its customers from falling victim to fraud.

In March 2020, the late Mr S and Mr S1 called NatWest as Mr S1 was concerned that his father was making payments as the result of a scam. While Mr S1 and his brother were convinced that the late Mr S was the victim of a scam, the late Mr S was convinced that X was genuine. As a result, a scam claim wasn't raised in March 2020, and they didn't call NatWest back until November 2022.

I'm very conscious that if Mr S1 and his brother, couldn't convince the late Mr S that X weren't genuine, it's unlikely that NatWest could've. By the time the late Mr S made the last two payments in 2021 and 2022, he had been receiving returns for three years from his previous investments with X. Also, I can't see that there was any new or concerning information available about X online that suggested he should've been concerned.

It's worth noting that NatWest did call the late Mr S in May 2021, prior to him making payment five. During that call NatWest raised concerns about the payment he was attempting to make and asked questions about the company he was paying. The late Mr S told NatWest that he'd dealt with X previously, he'd talked to the Managing Director of X a number of times, and that X were genuine. NatWest asked the late Mr S to call X and confirm that the account details he'd received by email were correct, and NatWest said they'd call him back. When NatWest called back, the late Mr S said he had checked the account details.

There wasn't any information shared with NatWest during this call that meant they should've been concerned when the late Mr S went on to make the last two payments.

Overall, I'm not satisfied I can fairly hold NatWest liable for the late Mr S's loss. I'm not persuaded that the evidence proves X were operating a scam, as opposed to being a high-risk investment which failed. And I'm not convinced that better or earlier intervention by NatWest would've prevented the late Mr S from making the payments to X or meant they could reasonably have refused to follow his payment instructions.

I agree that the late Mr S was vulnerable due to changes in his physical health and his bereavement, but I'm not satisfied that NatWest were aware of this. So, I can't fairly say NatWest should have taken additional steps as a result. I appreciate that the late Mr S was over 80 when he made these payments, but I'm not satisfied that NatWest could fairly have refused to follow his payment instructions solely on that basis.

I realise that this will be very disappointing for the estate, but I'm not satisfied that I can fairly ask NatWest to refund the payments the late Mr S made.

### **My final decision**

My final decision is that I don't uphold this complaint against NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 5 January 2026.

Lisa Lowe  
**Ombudsman**