

The complaint

Mr R is unhappy that National Westminster Bank Plc will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr R has brought his complaint through a representative, for ease of reading I will refer solely to Mr R in this decision.

What happened

Mr R says in 2018, after some online research, he decided to invest £10,000 in a bond offered by a property company, company W. He sent a faster payment on 14 February 2018. When he never received any return on his investment and couldn't contact company W, he reported to NatWest that he believed he had been the victim of a scam. This was on 29 May 2020. Mr R says he later found out the funds were not used for the intended purpose and the director of company W had defrauded many people.

NatWest rejected his refund claim saying it had made no error, the payment did not match fraud trends and was not deemed suspicious.

Mr R brought his complaint to this service saying NatWest has to refund victims of APP fraud under the Contingent Reimbursement Model. It has failed Mr R as it did not detect the transaction as unusual and it has refused to investigate it further. He provided information that he said conclusively showed company W's property bond was a scam.

Our investigator did not uphold Mr R's complaint. She said NatWest did not act unfairly by not intervening and asking about the faster payment as it was not unusual for Mr R's account. And even if it had she did not think this would have changed the outcome as Mr R was happily investing his money after due diligence. With regards recovery, she thought NatWest could have contacted the recipient bank faster but given the elapsed time between the payment and Mr R's fraud claim it was unlikely this would have changed the outcome.

Unhappy with this assessment Mr R asked for an ombudsman's review. He outlined in detail why this investment was a scam. He then said the transaction was unusual for him and the bank should have intervened. And he argued that had it done so effectively it would have prevented the scam. He also asked how it had been determined that he'd researched the opportunity and was comfortable making the investment.

I reached the same conclusion as the investigator but as I relied on different findings I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 26 September 2023.

Extract from my provisional decision

The first question we typically look to resolve in cases such as these is whether the company involved, so here company W, was actually operating a scam.

Not every complaint referred to us as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in very disappointing returns or losses.

Some investment companies may have promoted products, like the mini-bond that is the subject of this dispute, which were not regulated by the FCA—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Banks and other Payment Services Providers have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

Company W was a legitimate private limited company, incorporated in September 2015. It traded for five years until it went into administration in 2020. Mr R has provided detailed information that he says evidences the bond he purchased was part of a scam. I am aware the police are currently looking into allegations of investment fraud against company W. As this an ongoing investigation it is not my role to make a conclusive finding as to whether or not Mr R's bond purchase was part of a scam.

However, this does not mean I can't consider whether NatWest ought to have identified Mr R's payment as out of character, and therefore intervened before processing it. And if so, I then need to decide had it done so what would the most likely outcome have been. This must be based on what was known publicly and by Mr R about the investment opportunity at the time.

There's no dispute that Mr R made and authorised the payment. Mr R knew why he was making the payment. At the stage he was making this payment, he believed he was investing in a property bond. I don't dispute Mr R didn't receive what he thought he would, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that NatWest has an obligation to follow Mr R's instructions. So in the first instance Mr R is presumed liable for his loss. But there are other factors that must be taken into account.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payment pre-dates the Contingent Reimbursement Model (CRM) code its principles do not apply in this case. This means I think that NatWest should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.*

In this case I think Mr R's payment for £10,000 ought to have triggered further checks by NatWest. I have reviewed Mr R's current account statements from the 12 months prior to this transaction. It seems from the information available to me that the high value was out of character for the account, and it was a new payee. The investigator referenced a payment for a similar amount in the prior month, but this was a one-off in Mr R's 12-month account history and clearly for a common reason at that time of year. So I don't think that meant this payment was not unusual – and I note NatWest has accepted this in its submission to this service. However it says value alone would not trigger a fraud check where there are no other fraud threats. But as the transaction was out of character I find NatWest should have contacted Mr R to ask for some detail about the payment before processing it.

This means I need to decide if NatWest's intervention would have made a difference to Mr R's decision to send the payment. On balance I don't think it would. I say this based on the questions NatWest should have asked given the features of investment scams at the time – but taking into account that it had no duty to give investment advice. At this time investment scams were often characterised by rates of return that were too good to be true and by receiving the opportunity to invest via a cold call or an unsolicited offer, with significant pressure applied to 'act now'.

Mr R's testimony about the sale of the bond is not particularly detailed. His representative says it was initiated from a cold call, but the bank's records show that when Mr R spoke to NatWest he told it he was actively looking to invest at the time and had been searching online for opportunities. He recalls that it was following this research that he was contacted by a representative of company W. He then chose company W's 5-year bond with, he recalls, a rate of return of 8%. Mr R was funding the investment with savings he had transferred into his current account prior to making the faster payment.

I don't find the bond purchase had any of the characteristics associated with an investment scam. I have seen no evidence there was urgency placed on Mr R to invest quickly. Mr R has said he checked Company W's legitimacy at Companies House and read a number of online reviews before proceeding, indicating there was no immediacy in his decision. He recalls the rate of return was 8%, and the Investor Manifesto (IM) he submitted to this service shows the quoted rate over a five-year term was 8.5%. I don't think an 8% or 8.5% rate of return should have caused concern. Mr R has not confirmed when he received the IM, but nevertheless I find it is important contemporaneous evidence. I say this as if NatWest had been concerned Mr R lacked detail about his investment he would most likely have obtained this – or used it if he had it at the time - to satisfy its questions.

And I don't think the IM, or the answers it would have allowed Mr R to give, would have created any alarm. It gave credible detail on how the bond would work and set out that the company that was running the financial promotion for company W was authorised by the FCA - there was not a requirement for companies issuing mini-bonds to raise money to be authorised by the FCA. So the fact company W was not regulated would not have caused NatWest any particular concern.

And there is no record of any published regulatory warning about company W in 2018. So it seems at the time of the event there would have been no public information that NatWest ought to have been aware of and reacted to. Or indeed that Mr R would have come across had NatWest suggested he first complete more checks.

It's also notable there were no warnings at that time about mini-bonds as a product. The FCA published more information about mini-bonds in May 2019 and highlighted some risks involved with investing in such instruments. But this information was published nearly two years after Mr R made his payment.

The FCA temporarily banned the mass marketing of speculative mini-bonds to UK retail consumers from January 2020, whilst it consulted on permanent rules. It made the temporary ban permanent the following year. So I don't think NatWest could have been reasonably aware of this given that this information was published around 30 months after Mr R made his payment.

In the round, I don't think a proportionate level of questioning by NatWest would have led it to conclude Mr R was at risk of financial harm and that it should not process the payment.

I have then thought about whether NatWest did what this service would expect to recover the funds once Mr R's made a claim in 2020. Given the length of time that had passed I'm satisfied that recovery from the receiving bank was a not a viable option, irrespective of how quickly NatWest contacted it.

It follows for the reasons set out above I cannot fairly hold NatWest liable for Mr R's loss.

NatWest did not respond to the provisional decision. Mr R's representative largely repeated its previous submissions; its response does not seem to take into account my provisional findings – for example, I agreed that NatWest ought to have intervened.

It said, in summary, Company W was definitely operating a scam and the money Mr R invested was not used for the purpose described in the IM; the bank failed in its duty of care and so must refund Mr R's money with interest; the bank should have stepped in as the payment was high value and to a new payee and had it asked the right questions it would have stopped the scam. Also, it provided new information saying Company W had an account with NatWest which had been shut down so it ought to have told Mr R this was a scam.

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 have carefully reviewed Mr R's representative's submission in response to my provisional decision. This repeated much of what it sent in during this investigation – and my provisional decision has already addressed the points that I found to be material to the outcome of this complaint so I will not repeat those findings here. They are covered above in the extract from my provisional decision.

It also sent in some new information for my consideration, saying that it had come to its attention that Company W previously had an account with NatWest that the bank had shut down. And as NatWest was privy to this information it should have told Mr R why this investment was likely a scam. It did not however provide any more substantive information such as the source of this new information, nor the date of the account closure. I requested supporting evidence, but Mr R's representative did not provide anything.

NatWest however has confirmed Company W did not have an account with it, but did hold an account with another retail banking brand in its group. This was active in February 2018.

It follows this new information does not change my conclusion and for the reasons set out above I cannot fairly hold NatWest liable for Mr R's loss.

My final decision

I am not upholding Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 November 2023.

Rebecca Connelley
Ombudsman