

The complaint

Mr P complains that National Westminster Bank Plc (NatWest) hasn't refunded him after he reported falling victim to a scam.

What happened

The circumstances of this complaint are well-known to both parties and so I'll summarise the background here, rather than go into extensive detail.

Mr P received an email about an investment opportunity with a business I'll call S. The premise was that he would put money down to cover the cost of renting a short-term let property. That property would then be rented out to someone else at a higher price, thereby generating returns. He didn't know at the time, but Mr P had been contacted by a scammer.

Mr P has said he'd done something similar before and was keen to do it again. He was persuaded to invest £4,000 into a property for a monthly return of £800, payable for a period of three years. But he didn't have the full amount to invest right away. S said he could put in £3,200 and then forego the first month's profit to make up the shortfall, which Mr P agreed to. He signed a contract and sent the money as instructed.

A few weeks later S asked Mr P if he'd be interested in another property, but he couldn't afford it at the time. The scammer kept contacting Mr P, gradually reducing the required investment amount, promoting a 'special offer', whilst saying the return would still be £850 a month. Mr P eventually agreed and sent a further £1,500 to the scammer.

Mr P had been expecting the first returns on investment to be paid in January 2023 but received nothing. He tried to contact the scammer but received no response. It was then he realised he'd been scammed.

Mr P reported what had happened to NatWest. It investigated but said it wouldn't refund him.

NatWest said Mr P hadn't fallen victim to a scam but instead had a civil dispute with S, given it appeared to be a genuine company that had failed to honour a contract. NatWest also said it hadn't flagged the payments made by Mr P as suspicious, and subsequently asked no questions about them, because they were of relatively low value; they didn't stand out as a scam risk to the bank.

Mr P was unhappy with NatWest's response and so brought the complaint to our service. One of our investigator's considered what had happened and didn't think the complaint should be upheld.

She thought there was enough evidence to say Mr P had been scammed, rather than it being a dispute over goods/services not received. And, on that basis, our investigator went on to consider whether Mr P ought to be refunded by NatWest under the Contingent Reimbursement Model (CRM) Code.

She said there was no need for NatWest to refund Mr P as she didn't believe he'd held a reasonable basis for believing the proposed investment opportunity, and the parties involved, were legitimate.

Mr P didn't agree and so the complaint has been passed to me for 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.

I'm reaching the same outcome as our investigator and for broadly the same reasons.

Mr P is responsible for payments made from his account which he authorises. This is the starting point at law as set out in the Payment Service Regulations (2017). There's no dispute here that Mr P authorised the payments to S, even though he did so under false pretences.

NatWest is, however, a signatory to the Lending Standards Board's CRM Code. The Code looks to see the victims of authorised push-payment (APP) scams reimbursed in most circumstances. But there are exceptions to reimbursement that a firm like NatWest can rely in to decline a refund.

I'm satisfied one of the exceptions to reimbursement applies here as I don't find it can be fairly and reasonably said Mr P had a reasonable basis for believing he was transacting with legitimate parties for legitimate purposes. I'll explain why. And, in doing so, I'm considering the circumstances Mr P was in at the time and whether his actions were reasonable. This isn't the application of a set of standards, applied with the benefit of hindsight. Having said that, it is of course necessary to look at the facts of the case and consider what Mr P knew, or ought to have known at the time, and then to think about whether the actions he did take were reasonable.

Mr P was contacted out of the blue, by someone he didn't know, who was offering a lucrative sounding investment opportunity. I find it's fair and reasonable to say that receiving such an offer from such a source ought commonly be looked upon with at least scepticism, if not suspicion, from the outset. That then immediately leads to a position where the parties behind such an offering ought to be looked into to ensure their legitimacy, as far as possible.

Our investigator said that the proposed returns on investment also ought to have caused the opportunity to be viewed with suspicion. I agree. Mr P was told he would be able to earn returns of 25% per month, every month, for three years whilst incurring no additional costs. I, like the investigator, find that figure to be in the realms of too good to be true. Over the course of three years, it would mean a return of £28,800 on just a £3,200 investment, which sounds improbable.

That return on investment was unaffected by Mr P's inability to provide the full initial investment sum, given he was to be able to generate the same returns despite a shortfall of £800 of the investment requirement.

As the other investment opportunities were put to Mr P, the reasonable basis for belief around the proposed returns falls away further. The amount needed to invest kept dropping, whilst the returns on the investment increased to £850 per month. These are returns that ought to have been viewed with a great deal of scepticism.

I'm satisfied that the method of contact and the improbable rates of return ought to have led to Mr P being very wary about proceeding without first taking some significant precautions. I'm not persuaded such precautions, proportionate to the risks of the proposed opportunity, were taken.

Mr P has said he did carry out checks on S. But it's somewhat confusing as to what the relationship between S and various other companies Mr P was introduced to is. Mr P was first contacted by S, which wasn't a limited company. It claimed to have a parent company which went by a different name, and which doesn't and never has appeared on Companies House either. There is, within different pieces of correspondence, reference to other

companies that do have a Companies House entry, but the connection between all these parties is never questioned or explained.

Looking at the entries on Companies House that can be found, there's very little information available. There are no accounts ever filed and there's no record of any assets ever being held.

Mr P has said he also looked at the website he was given the address for and has said it looked convincing. It's difficult for me to comment here as the website is now inaccessible and there have been no screenshots provided. But even if I were to accept there was a convincing looking website, that would not be enough alone, or in consideration of the other facts of the case, to establish a reasonable basis for belief.

Mr P has explained how the contract he was given lent legitimacy to the arrangement. Whilst I can accept he would have taken some comfort from being presented with a contract, I don't believe it can be said to have given a reasonable basis for believing all was above board. One reason for this is that there seems to be an introduction of another party - JV Partner. It's possible this is meant to refer to a 'joint venture partner', rather than another company or party to the agreement. But that isn't really what the contract says and there's little there to establish contractual obligations between Mr P and S (or any of its apparently connected parties).

Mr P was sent invoices for the funds he was investing. But these invoices were very basic. They showed virtually no company information such as: company number, registered address, VAT number. The basic requirements for a legitimate invoice from a legitimate company weren't met.

There also appears to have been no proof of concept or proof of entitlement to rent out properties requested or obtained by Mr P. There was nothing he was shown to prove that S had any right to rent out the properties it said it had secured. I'm satisfied it would have been reasonable to seek such proof in any event, but particularly where there were signs all was not as it was being presented.

With all the above in mind I can't say Mr P made the payments with a reasonable basis for believing all was legitimate.

I've also thought about whether NatWest ought to have done more to try and protect Mr P from financial harm. The Code does require NatWest to give effective warnings against scams where it detects a scam risk. But here I'm not persuaded the payments made by Mr P were so unusual or of such a high value that it needed to do more than it did. Its response to the payment instructions given was proportional in the circumstances.

We've asked the bank the money was sent to whether there was any prospect of Mr P's money being recovered. But we've been told it was removed shortly after it was deposited. And so there was no way it could have been returned.

My final decision

I don't uphold this complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 April 2024.

Ben Murray
Ombudsman