

## **The complaint**

Mr L is unhappy National Westminster Bank Plc (“NatWest”), won’t reimburse him for the money he lost when he made a payment to a business, which Mr L considers was a scam.

## **What happened**

The details of this case are well-known to both parties, so I don’t need to repeat them at length here. In summary, Mr L found a photography business (whom I’ll call “S”) at a wedding fair. Mr L was advised that if he made payment in full, he would receive a £200 discount. Mr L made a faster payment for £845 on 18 May 2022 which was the full amount for a wedding photography package for his upcoming wedding in 2023.

On 27 July 2022 S declared bankruptcy. Mr L contacted S and received an automatic email response that S had ceased trading.

Mr L considers that the S set out with intent to defraud him – that is to take money for services that S had no intention of providing. Mr L considers that he was the victim of a scam.

Mr L subsequently contacted his bank to see if there was anything it could do to help and to see if any funds could be recovered. NatWest declined reimbursing Mr L and so he referred the matter to our service.

An Investigator reviewed the matter. In short, they considered whether the faster payment Mr L made was covered under a voluntary code called the ‘Contingent Reimbursement Model’ (the CRM Code) which came into force in May 2019 and that NatWest is signed up to.

The CRM Code sets out when banks (so both sending banks and receiving banks) should reimburse a scam victim and it provides increased protection for customers who are the victim of scams. But the CRM Code doesn’t apply to every type of disputed payment. The CRM Code doesn’t apply to disputes that are deemed to be a ‘civil dispute’ between two parties.

Our Investigator didn’t uphold the complaint as they considered the matter was a civil dispute – and the CRM Code didn’t apply to the payment Mr L had made. So they didn’t consider NatWest was liable to refund Mr L for his losses.

Mr L disagreed and has asked for an ombudsman’s review as the final stage of our process. So, as the matter hasn’t been resolved, it’s been passed to me to decide.

## **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 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 have been good industry practice at the time.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether the matter is a civil dispute. 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.

I'm very sorry to hear of what's happened to Mr L, I can see he made a payment for a photography package for his wedding and got nothing in return. So I can certainly understand Mr L's sense of frustration about the matter and why he would consider that S, to his mind, defrauded him.

However, not all cases where individuals have lost sums or haven't received the goods or services they have paid for, are in fact fraudulent and/or a scam.

When considering what is fair and reasonable in this case, I've thought about the Lending Standards Board's voluntary CRM Code, which NatWest has signed up to and was in force at the time Mr L made this payment. And outside of the CRM Code, NatWest also has wider obligations to fairly and reasonably have had 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 in some circumstances, irrespective of the transfer channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. But the Code is quite explicit that it doesn't apply to all push payments, for example it doesn't cover civil disputes. It says;

*"DS2(2) This code does not apply to:*

*(b) 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"*

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Our Investigator felt the payment Mr L made formed part of a civil dispute and, as such, is not covered by the CRM Code. Mr L disagrees. He feels S has scammed him.

In order to conclude that the payment Mr L made was part of a scam, I'd need to be reasonably satisfied from the available evidence that S was not legitimate and had set out with intent to defraud Mr L. But I'm not persuaded, based on what I've seen, that I can safely conclude that this is the case here.

It's clear the agreement Mr L entered into with S didn't go as Mr L expected as S declared bankruptcy just over two months later and I can understand entirely why he feels so strongly about what has happened. But having considered everything provided, I'm not persuaded, from what I've seen, that there is enough evidence to safely say S set out with the intention to defraud Mr L at the time he made the payment.

S appeared to be a legitimate business, was VAT registered and had been trading for some time. And from the evidence I've seen, seemingly it had previously been able to provide its services successfully and satisfactorily to customers (in the main).

Clearly S encountered financial difficulty which ultimately led to it declaring bankruptcy and being placed into the hands of the official receiver. However I am not persuaded that I can safely conclude there was intent from S to never provide the services Mr L paid for at the time he made the payment.

I note from the automatic email response S provided customers once it ceased trading that it stated:

*"It is with upmost sadness we would like to inform you that [S], has ceased trading. We will no longer be able to provide any of our services to you at your wedding.*

*We have tried so hard the last couple of years to survive the Covid-19 pandemic. The financial implications have proven too much for us to get over.*

*Unfortunately, I have been left with no choice but to cease trading and declare bankruptcy as of today, July 27. An official receiver will be in touch with further information.*

*NB, if you have had a wedding with us in the last 12 weeks and are still waiting for your photos/ video, we will be in touch over the coming weeks with the information on how you can get access to your photo and video files. We appreciate this isn't ideal but we will be in touch with the relevant information asap.*

*I apologise as this is going to cause stress and I am extremely sorry for this. Unfortunately there was never going to be a good time.*

*I have listed below a group of recommended photographers, videographers and mirror booth companies who may be able to help on your day. Please note these people are in no way affiliated to [S] and you will be booking them in a completely separate entity."*

It seems that S, while struggling financially, was trying to continue its business. I am not in the position to say whether that was fair or not and ultimately it was the commercial decision of the business itself.

The question I have to ask is whether there was intent by S to defraud Mr L from the outset, and I'm not persuaded there was. S were a legitimate business that was VAT registered and from the automatic email response above suggests it was still operating at the time Mr L had made payment to it – as they were seeking to process photos and videos for customers who had had their wedding in the previous 12 weeks.

Overall, I don't find that this is indicative of a business setting out with intent to defraud people. I also note S also used sub-contractors with one sub-contractor within a news article advising that around six weeks prior to the bankruptcy, payments for invoices had slowed. Bearing in mind S declared bankruptcy on 27 July 2022 it seems as though they were still operating and providing services to customers at the time Mr L made his payment to it on 18 May 2022.

To my mind, I can't safely say that at the time Mr L made payment to S, there was clear intent to defraud Mr L. Moreover it seems it was a failing business that was trying to keep operating.

It follows that, on balance, I can't fairly or reasonably say that, based on what I've seen, S set out with the intent to defraud Mr L at the time he made the payment. This being the case I'm satisfied the CRM Code doesn't apply. And I can't ask NatWest to refund the money Mr L has lost.

I am also satisfied that there wasn't anything else NatWest could have done to either prevent the loss or recover the funds.

I acknowledge that Mr L has provided information from a social media website / forum that was set up as a result of S declaring bankruptcy. And within that some customers were refunded by their banks. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Refunds may have been done on a gesture of goodwill basis. And I am also mindful that where some customers may have paid by debit or with credit card there are other schemes available that offer customers protection such as 'chargeback' or 'Section 75' provided by Visa and Mastercard which some customers may have benefited from. However those schemes unfortunately aren't applicable to faster payments. Here, as I'm required to do, in reaching my decision I've solely looked at the individual circumstances of Mr L's complaint.

I realise that my decision will be disappointing for Mr L. But overall, for the reasons I've explained I can't fairly or reasonably ask NatWest to refund the money Mr L has lost.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 September 2023.

Matthew Horner  
**Ombudsman**