

## **The complaint**

Mr P complains that National Westminster Bank Plc (NatWest) did not refund the £75,000 he lost to a scam.

## **What happened**

Mr P was approached by an acquaintance, who was the director of a seemingly successful property company, with an investment opportunity. Eventually, Mr P decided to invest and after cashing in some other investments, he signed an agreement alongside his wife to invest £75,000 in the company I'll call 'X'. The agreement they signed set out that the funds would be used for the purchase and sale of property options agreements. The transfer was processed on 3 June 2019.

Mr P was expecting some returns relatively quickly and at a rate of around 25%. The initial timescale was exceeded and after some pushing, Mr P received a partial return of £10,000 on 30 July 2019. Over time, there were more excuses as to why returns could not be paid, and Mr P never received any additional funds.

Mr P now says that one of the directors of X who I'll call 'J', deceived the other directors as well as investors and was able to divert significant funds from X. Mr P has said a police investigation is ongoing and there have been a number of other victims. He raised a claim with NatWest as a result.

NatWest looked into the claim but based on what they had seen, they felt this was more likely a high-risk investment which had not been successful, so they did not think it met the definition of an authorised push payment ("APP") scam, so it was not covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") code. Mr P disagreed and referred the complaint to our service.

Our Investigator looked into the complaint and was able to review information about X's accounts. In doing so, they did not agree there was enough to safely say this met the definition of an APP scam. They had seen no evidence of the scam J was apparently involved in, or that J had benefitted from the diverted funds. They could see X was a legitimate company and had been registered since 2016, and nothing they had seen suggested it was X's intention when Mr P transferred the funds to defraud him and not use them for the intended purpose. So, they felt NatWest had correctly treated this as a civil matter and not a scam claim.

Our Investigator also noted that even if the payment had been delayed for extra checks by NatWest, considering that Mr P was paying someone he knew, who appeared to be a director of a legitimate company that he had a contract with, it's unlikely there would have been any concerns at the time. So, any intervention would not have stopped the payment being processed.

Mr P's representatives disagreed with the findings and asked for a review of the outcome. As an informal agreement could not be reached, the complaint has been passed 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.

It isn't in dispute that Mr P authorised the payment of £75,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transaction. But he says that he has been the victim of an APP scam.

NatWest has signed up to the voluntary CRM Code, which provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:

*...a transfer of funds executed across Faster Payments...where:*

*(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

*(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

So, I've considered whether or not the transaction falls under the scope of an APP scam as set out above. Having done so, I haven't seen enough to agree that it does. I'll explain why in more detail.

I've firstly considered the evidence provided by Mr P. This includes the contract signed by himself and X, e-mail conversations between other investors who lost their money and his testimony. The contract itself does not raise any particular red flags and has the hallmarks of a legitimate investment contract.

Mr P has said that it took a few years for the other directors of X to come forward and explain J had lost the funds without their knowledge or involvement. And the e-mails he has provided are also from 2021, two years after the transfer occurred. The e-mails indicate that J himself was in contact with the investors and hoped to repay them still. Having reviewed this evidence, none of it shows me that at the point Mr P transferred the funds to X they intended to defraud him and use his funds for alternative means. It's unclear when the funds were diverted by J, but this could have occurred at any point within those two years, and it still is not clear if J made a bad investment with the funds, was the victim of a scam himself or intentionally defrauded the investors as alleged.

I've also reviewed X's statements as well as correspondence from the police. The activity on the receiving account shortly after Mr P transferred the funds does not indicate that they were used as part of a scam from what I have seen, though it should be noted that I'm unable to share any details as this is sensitive third-party data. So, this also does not satisfy me that Mr P's funds were taken with the intention that they were to be used for fraudulent purposes. The police have indicated J was involved in a scam they have called the 'Lyca Prize' scam and they've mentioned a name of an individual in connection to this. Having looked into this, I can't see any clear connection between Mr P's funds, X and a Lyca prize scam, and I've been offered no further explanation around this.

On balance, having carefully reviewed everything available to me, I can see no indication that X intended to use Mr P's funds fraudulently when he signed the agreement and sent the funds to them. While it appears something has happened between J and X, it is not clear

what occurred or when, so I'm unable to conclude Mr P has been the victim of a scam in this case. Because of this, I think NatWest acted reasonably when they did not treat this as a scam claim, and I don't think they have made an error in the circumstances.

I think it also follows that even if NatWest had delayed the transfer of £75,000 to ask further question around it before processing it, this would not have raised any concerns at the time or prevented Mr P from sending it. I say this because Mr P had a contract with X and knew the individual who introduced him to the company. So, I don't think NatWest missed an opportunity to prevent the payment from being made.

### **My final decision**

I do not uphold Mr P's 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 17 May 2024.

Rebecca Norris  
**Ombudsman**