

The complaint

Mr and Mrs J complain that National Westminster Bank Plc (NatWest) has not refunded money they lost to what they believe was an investment scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of what happened here.

Mr and Mrs J were looking to invest some of their funds. After an extended period of discussion with a broker who worked for E, an investment firm, they agreed to invest £10,000 in precious metals. Mr and Mrs J made this payment to E on 12 December 2019.

Mr and Mrs J had been expecting to receive a contract and receipt for their trade, but when this didn't arrive, they became concerned. They did then receive some evidence that a trade had been carried out on their behalf on 16 December 2019, but they remained concerned about how E was operating. So, in March 2020 they asked to withdraw their investment. E however did not return their funds, and over the next couple of years Mr and Mrs J made repeated attempts to find out what had happened to their money and to get it returned to them. It has since come to light that E may have reinvested their funds without their permission.

Ultimately, E went into voluntary liquidation, and Mr and Mrs J still had not received any of their funds back. Mr and Mrs J believe that E has been acting fraudulently.

Mr and Mrs J contacted NatWest to report that they had been the victim of a scam. But NatWest told them it felt this issue was a civil dispute between Mr and Mrs J and E, and so it said it would not be refunding Mr and Mrs J's loss.

Unhappy with NatWest's response, Mr and Mrs J brought their complaint to this service and one of our Investigators looked into things. But they agreed with NatWest that this was most likely a civil dispute, and so Mr and Mrs J were not entitled to a refund of the payment they made. Mr and Mrs J remained unhappy, they maintain that E was acting fraudulently and that, since they believe they have been scammed, NatWest should bear some responsibility for their loss under the CRM Code.

So, as the case could not be resolved informally, it's been passed to me for a 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.

Having done so and having thought very carefully about what has happened here, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for Mr and Mrs J but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold NatWest liable for their loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I understand that Mr and Mrs J feel that they have been scammed, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which NatWest has signed up to and which was in force at the time Mr and Mrs J made this payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether NatWest therefore ought to reimburse Mr and Mrs J under the provisions of the CRM Code.

The CRM Code is quite explicit that it doesn't apply to all push payments. 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."

NatWest is of the opinion that Mr and Mrs J's circumstances fall into this definition of a private civil dispute and I agree that this is most likely the case here. I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that E was not a legitimate business or that it set out with an intent to defraud Mr and Mrs J from the outset. It seems more likely to me that this is a dispute about a failed investment.

I say this for the following reasons.

E was incorporated in 2015. And while it has changed names a few times it appears to have operated for many years. E is currently in liquidation, but I can see that until it entered voluntary liquidation it regularly submitted the relevant paperwork required by Companies House. With all of this in mind it seems clear to me that this was a legitimate business, at least at some point.

Although E is now in liquidation and it's clear some investors didn't receive what they paid for, or their contracts were not fulfilled, this does not prove beyond doubt that E intended to defraud Mr and Mrs J when taking their payment. Given E's apparent genuine status, I would need to see convincing evidence that E was more than a failed business to be satisfied that Mr and Mrs J were the victims of an APP scam.

I do appreciate that there are aspects of what has happened to Mr and Mrs J that suggest that E was not acting professionally. And it is evident that there were various other businesses associated with E, and that payments were moved from E to those other businesses, but that is not in itself evidence that E was acting fraudulently, rather than being a poorly run or failing business. And the evidence I have seen direct from E's account does not show any clear signs that funds from investors were not being used for their intended purpose.

I acknowledge that a previous director of E has been charged with criminal offences relating to fraud, but that was in relation to a different, unrelated, business and I have seen no clear evidence that individual was involved with E after he was removed as a director. I also

acknowledge that Mr and Mrs J say the Insolvency Service is carrying out an investigation into the conduct of E's director. But there is no guarantee that such an investigation will find clear evidence that Mr and Mrs J were the victim of a scam, and what I have seen from the Insolvency Service so far does not provide any definitive evidence that fraud has taken place here.

My role here is to decide if NatWest considered Mr and Mrs J's scam claim fairly and reasonably under the CRM Code, at the point it was raised. And I'm satisfied it did, I have seen no clear and persuasive evidence to show that Mr and Mrs J were the victim of an APP scam. I appreciate Mr and Mrs J won't agree, but from NatWest's point of view this situation doesn't display the hallmarks most typically associated with a scam. This is not to say that there is no issue at all between Mr and Mrs J and E. Clearly there is. But this type of dispute isn't something that the CRM Code covers.

If new material information comes to light at a later date, then Mr and Mrs J may be able to bring a new complaint to NatWest. But I'm satisfied, based on the available evidence to date, that I have seen and been presented with by all parties, that this is most likely a civil dispute. And NatWest's decision under the CRM code was therefore correct.

So, for the reasons I've explained above, I do not consider that the payment in dispute here is covered under the CRM Code, or that it would be fair to hold NatWest responsible for the money Mr and Mrs J have lost.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 1 August 2024.

Sophie Mitchell
Ombudsman