

The complaint

Mr and Mrs W complain that National Westminster Bank Plc ('NatWest') won't refund money they lost when they say they fell victim to a scam.

What happened

Mr and Mrs W hold a joint account, and each have a personal account with NatWest. The transactions I am considering in this complaint were made from all three accounts.

Mr and Mrs W are now represented in this case (although they weren't when they first brought a complaint to this service), but as the accounts were in their names, I'll refer to them throughout this decision.

Mr and Mrs W say that they were introduced to a mini bond with a company I'll call H. They were provided with literature which led them to believe H was selling the bonds to raise finance to develop a number of commercial and retail properties. Over the course of seventeen months Mr and Mrs W made multiple payments from their joint and sole accounts to companies associated with H in respect of various bonds. They initially received interest as expected but this later stopped, and H subsequently went into administration.

Mr and Mrs W now believe that H wasn't operated legitimately and that they, and numerous others, are the victims of a sophisticated scam which was marketed to inexperienced and elderly investors. They say that few properties were developed, and H had no intention of fulfilling the agreement reached.

The first payment to H was from Mr and Mrs W's joint account and was £240,000 plus a fee of £23 on 24 May 2019. Between April and October 2020 Mr W made twelve payments to H and associated companies of between £5,000 and £20,000 which totalled £212,500. One payment of £17,500 and four of £20,000 left Mrs W's sole account between June and October 2020 (totalling £97,500). Mr W received credits of £39,300 from H, meaning their total loss exceeds £500,000. Mr and Mrs W say they have also lost a significant amount of interest.

I have summarised Mr and Mrs W's main reasons for believing they are the victims of a scam below. I appreciate Mr and Mrs W raised other points which I have also carefully considered but not specifically commented on.

- Documents given to them by H to encourage them to invest were misleading and fictitious, with bogus financial claims.
- An auditor resigned and said they hadn't received all the information and explanations needed for their audit. Another auditor who audited accounts filed in 2021 provided an adverse opinion in respect of H.
- The mini-bond programme was marketed and recommended by unregulated introducers. Mr and Mrs W say these brokers were paid around 35% of the amount invested. The payment of this commission makes the returns offered by H almost impossible.
- Techniques have been used to manipulate accounts to conceal what was happening to investor's funds, including changing the accounting period.

- Action Fraud has received multiple complaints from other investors.
- The Insolvency Service is investigating the director of H.
- The Serious Fraud Office are investigating H and its director.
- In September 2021 a leading global management investment firm which had dealings with H wrote a letter that said H had deliberately misled investors and acted with “malicious falsehood”.
- Mr and Mrs W provided multiple press articles about H.

Mr and Mrs W say that they should be reimbursed under the Lending Standards Board’s Contingent Reimbursement Model Code (CRM Code), and that NatWest failed to do enough to protect them when they made high value payments, particularly given Mr W’s vulnerability at the time the payments were made. Mr W has explained that he was dealing with the side effects and treatment for an aggressive cancer and was too ill and confused to understand what he was doing at the time payments were made. His aim was to provide for his family’s future as he hadn’t been given a positive prognosis. He now suffers from disability, deep regret, and shame.

NatWest concluded that Mr and Mrs W weren’t the victims of investment fraud. It said that the investment had failed. In reaching this conclusion, NatWest noted that H was a registered company with legitimate entries on Companies House but was now in administration, and that Mr and Mrs W had received interest for a period of time. NatWest said that if further information came to light it would reconsider its position.

Our investigation so far

The investigator who considered this complaint didn’t recommend that it be upheld. She said there was insufficient evidence to conclude that H didn’t intend to provide the agreed investment or make the returns it set out. This meant that he couldn’t ask NatWest to consider Mr and Mrs W’s complaint under the CRM Code.

Mr and Mrs W didn’t agree with the investigator’s findings and said that H ran a sophisticated scam. Their representative provided a detailed response, so I have summarised the main points below.

- Projects were completed to show legitimacy for future investments and because the intention was to extract future assets from the group.
- A property was purchased for £2.5m and an administrator’s report says it was worth around £16m. Mr and Mrs W said it was very unlikely the company would spend more than the potential value of the property on it so concluded that the maximum spend on the property would be £30.5m. Mr and Mrs W said this meant £17m wasn’t used for property development.
- In respect of another property Mr and Mrs W said, *“it is safe to assume that the company would not have ran the project at a loss and as such with a break even value of £22m, at least £6m was not used for property development.”*
- Another development doesn’t appear in the subsidiary company accounts.
- A company that supposedly lent £2.1m to H didn’t exist.
- The group’s accounts have been manipulated to show loans as assets to present a more favorable investment opportunity.
- H’s accounts show some concerning activities and clever accounting.
- H was concealing a bank account which is indicative of a scam.
- A director has removed an asset rich company from the group for his own benefit.

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 really sorry to hear about Mr and Mrs W's loss and Mr W's health. They have lost a huge sum of money at a difficult time for the family, which has clearly had a massive impact on their finances and on Mr W's health.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

The first payment of £240,000 on 24 May 2019 pre-dated the inception of the CRM Code by a few days. Given its value, and the fact it was made in branch, I consider NatWest ought to have asked some probing questions about the purpose of the payment and provided scam education. But, given what was known about H at the time the transaction was made, I'm not persuaded the kind of questions I'd expect NatWest to have asked would have prevented the payment from being made. H was a legitimate registered company, other investors were receiving returns, and Mr and Mrs W were given legitimate looking literature. Mr and Mrs W were also being advised by a broker. The concerns Mr and Mrs W have raised with this service have come to light after this transaction was made.

All subsequent transactions post date the CRM Code. Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (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 considered whether Mr and Mrs W's claim falls within the scope of the CRM Code, which defines an APP scam as:

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

It is for Mr and Mrs W to demonstrate that they are the victims of an APP scam.

To decide whether Mr and Mrs W are the victims of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr and Mrs W thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr and Mrs W understood to have been the purpose of the payments.

- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr and Mrs W thought they were investing in a property development company. I haven't seen anything to suggest that they didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

I appreciate that Mr and Mrs W believe H completed these developments to draw in investors and with the intention of removing assets from the group. But no persuasive evidence has been put forward to make me believe this is the more likely scenario. The additional points raised by Mr and Mrs W in response to the view are largely based on assumptions and indicate poor business management but don't go far enough to bring their claim within the scope of the CRM Code.

- I haven't been provided with evidence following an investigation by an external organisation which concludes that H was operating fraudulently. Administrators have referred to completing a bank account analysis looking at the movement of funds within the company's bank account. This analysis has been completed but no further details were provided in the most recent update.
- I'm aware that H hasn't filed audited accounts. I have also noted the inaccuracies highlighted by Mr and Mrs W in respect of accounts that have been filed. But I'm not persuaded this evidence goes far enough to demonstrate that H operated fraudulently. In the absence of the kind of evidence I have referred to above, I consider that Mr and Mrs W have provided evidence of financial mismanagement but not of an intention to defraud.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took Mr and Mrs W's payments was different to theirs. So, I consider NatWest acted fairly in not considering Mr and Mrs W's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr and Mrs W can ask NatWest to reconsider their fraud claim.

I'm really sorry to disappoint Mr and Mrs W, as I know they have lost a significant amount of money. But I'm not satisfied that I can fairly ask NatWest to refund them based on the evidence that is currently available.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 10 September 2024.

Jay Hadfield
Ombudsman