

## The complaint

Mr M complains National Westminster Bank Plc (NatWest) won't refund the money he says he lost to an Authorised Push Payment (APP) scam.

## What happened

In late 2019, Mr M was introduced to an investment opportunity with a property development company, "H". Between December 2019 and May 2021, Mr M sent £100,000 from his NatWest account for various 'loan note' investments with H.

When Mr M's investment contracts expired, he tried to withdraw his funds and profits but found he couldn't do so. H subsequently went into liquidation. In October 2023, Mr M complained to NatWest (via a professional representative). He said he had been scammed, and NatWest had failed to protect him when he made the payments.

NatWest didn't agree to refund Mr M, so he referred the matter on to our service. NatWest told us it thought H was a failed investment scheme rather than a scam, so didn't think it was liable to reimburse Mr M under the Lending Standards Board's Contingent Reimbursement Model ("the CRM code"). On review, our investigator agreed – so didn't uphold the complaint.

Mr M appealed the investigator's findings. I've summarised the main arguments raised by his representative:

- NatWest should have identified a potential scam risk due to the payments appearing uncharacteristic, so it should have intervened at the time.
- They don't think the investigator gave appropriate weight to evidence indicating H was operating fraudulently. Such as the level of commission it paid to unregulated introducers and information from H's liquidator.
- They also said Mr M's vulnerability means he should be reimbursed under the CRM code.

In November 2024, I issued my provisional decision explaining why I wasn't minded to uphold this complaint:

*To start, I want to reassure both sides that I've considered all their submissions in full when reaching my decision. The background and arguments set out above are simply a summary of what has been provided. While Mr M's representative says I should respond to each allegation or point made in their submissions, I will be focussing on the main points relevant to my determination.*

*It's agreed Mr M authorised the payments in question. Under the Payment Services Regulations 2017, the starting position is that he is therefore liable for the transactions. But there are additional considerations where the payment was made as a result of an APP scam – as Mr M says was the case here.*

*The CRM code*

*NatWest is a signatory of the CRM code. This provides additional protection to victims of APP scams, as defined in the code (in section DS1(2)(a)):*

*(a) APP Scam Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.*

*Section DS2(2)(b) of the CRM code contains a specific exclusion for:*

*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;*

*So, what I've considered is whether NatWest acted fairly in deeming this matter a civil dispute rather than a scam. Looking at the definition of an APP scam, I first need to consider what Mr M believed the purpose of the payments to be – and whether that was legitimate. I understand Mr M thought he was investing in a legitimate property development company.*

*Next, I need to consider what H's intended purpose was for the payments it received and whether that broadly matched Mr M's purpose – to determine whether there was a dishonest deception by H in order to deprive Mr M of these funds.*

*In making my judgment on this, I'm conscious H completed three separate developments. It was also working on other projects which it sold on to other developers when it ran into financial difficulty. These actions are indicative of a company operating legitimately.*

*While Mr M/his representative argues this work was used to give the appearance of legitimacy and lure in other investors, I'm not persuaded that is the more likely explanation. It would involve a lot of work and cost to complete three large scale building projects in order to then operate a scam.*

*Mr M's representative also argues the high commission paid to unregulated introducers means the returns offered were implausible. But I don't think the lack of regulation by the introducers, nor the use of commission, is enough to show H was not intending to use the money it received to fund building projects.*

*While Mr M's representative has also highlighted that H hasn't filed accounts since 2018, financial mismanagement isn't enough to show it was not intending to use the funds for development projects. To the contrary, projects were being worked on/completed during the period when H wasn't filing accounts.*

*I appreciate some investigations are ongoing. But at this point in time, I haven't seen anything from H's liquidator, or any other external bodies, to show H was taking transactions for developments which it had no intention of completing. If new material evidence comes to light at a later date to show H was operating a scam, then Mr M would be able to ask NatWest to reconsider this matter (and may ultimately be able to refer the issue back to us if he is unhappy with NatWest's response).*

*Having carefully considered all the available evidence and arguments, I'm not persuaded it's more likely H took Mr M's payments for a purpose which differed from what he expected. I therefore think it was fair and reasonable for NatWest to decline to refund him under the terms of the CRM code.*

*I'm aware Mr M's representative has argued he meets the CRM code's definition of vulnerability so should be refunded on this basis. But the code's provision about refunding consumers due to vulnerability only applies if they fell victim to an APP scam – and their circumstances meant they couldn't have protected themselves from it.*

*Given I've not found this scenario meets the CRM code's definition of an APP scam, I therefore don't think this argument is relevant to whether NatWest should refund Mr M. I would also point out the main arguments submitted about Mr M's vulnerability relate to the impact the scam had on him, rather than his circumstances at the time of making the payments.*

#### Wider considerations

*I've considered the argument that NatWest should still have intervened on these payments due to them appearing uncharacteristic. As there are situations when we would expect a firm to have taken additional steps before processing a payment – for example, due to it appearing indicative of fraud.*

*However, even if NatWest had asked Mr M about these payments in order to gauge and warn him about the potential scam risk, I'm not persuaded this would have prevented him from incurring the losses he is seeking from NatWest. That's because I don't think there was anything known at the time that would have led NatWest to think Mr M was being scammed.*

*I think it would have appeared that H was operating legitimately and undertaking/completing property developments. And Mr M had professional-looking, detailed documentation about the investments. I'm therefore not persuaded that any alleged failure by NatWest to intervene on these payments caused or contributed to his loss. I therefore don't consider it fair to hold it liable for this.*

I invited both parties to provide any further arguments and evidence for me to consider in response. NatWest hasn't added anything further. Mr M has replied that he thinks H must have known it was going into administration when accepting his last payment in May 2021 (it went into administration in December 2021), and therefore had no intention of using the money for the agreed purpose. He says if it was operating like this in 2021, it must also have been operating fraudulently when he first invested in 2019.

#### **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, I've decided not to uphold it. That is largely for the reasons given in my provisional decision, which are set out above and also form part of my final decision. I'll therefore focus here on addressing the points raised in response to my provisional findings.

I appreciate H went into administration around seven months after Mr M's last payment. But I don't think that timeframe is enough to demonstrate that H likely knew it wouldn't be able to

complete the project(s), and therefore intended to use the funds for other, unconnected purposes. I think there are too many other possibilities here – such as that H didn't realise it wouldn't be able to continue operating until later on.

Furthermore, the fact H went into administration doesn't mean it was operating fraudulently. This seems consistent with the alternative explanation that it was operating legitimately, but then ran into financial difficulties

As explained in my provisional findings, I would need to be convinced there was a dishonest deception by H at the time of taking the payment to conclude this was a scam. Overall, I'm not persuaded the timeframe alone supports that H intended to use the May 2021 payment for a completely different purpose.

It follows that I therefore don't agree the issue with H's administration means it was operating fraudulently when Mr M made the earlier payments either. As I have highlighted above, there are several examples of H undertaking and completing genuine projects, which suggests it was likely operating legitimately.

Having considered all the available evidence and arguments, I'm therefore persuaded it was reasonable for NatWest to deem this matter a civil dispute under the CRM code. Overall, I'm not persuaded NatWest should fairly be held liable for Mr M's loss.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 January 2025.

Rachel Loughlin  
**Ombudsman**