

The complaint

Ms S complains that Northern Bank Limited (trading as Danske Bank) failed to refund £30,000 she lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

Ms S fell victim to an investment scam with a clone of Citibank (posing as "Citibank Wealth Management") in May 2021 after she was encouraged to invest in ESG bonds after seeing an advert on social media. She made five payments from her account with Danske Bank totalling £30,000, which was paid to the scammer via an e-money account ("Kiyanpay").

Danske Bank refused to refund the money Ms S had lost as it said she had authorised the payments. Our investigator also didn't uphold the complaint. He didn't think the transactions were unusual enough to have warranted an intervention by Danske Bank to ask further questions, so he didn't consider it to be liable to provide a refund. Ms S disagreed, so the matter was passed to me to determine.

I issued my provisional decision on 2 February 2023. I said I was minded to uphold it and set out the following reasoning:

It isn't in dispute that Ms S authorised the disputed payments she made to Kiyanpay from her Danske Bank account (where her funds were subsequently transferred on to the scammers). The payments were requested by her using her legitimate security credentials provided by Danske Bank, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether Danske Bank should have done more to prevent Ms S from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated firm such as Danske Bank that Ms S's account was being subjected to unusual and uncharacteristic activity. On 24 May 2021, she made a payment of £3,500 to a new payee (Kiyanpay) and then made a further £6,000 payment soon after. Danske Bank ought to have known that multiple payments being made in quick succession to a new payee can often be indicative of fraud.

Ms S also did not have a history of making any such large payments either. Her statements show that the only large transfers made out of her account were into her savings account. There are not any other significant payments made from her account in the 12 months prior to the scam, and certainly nothing of around £9,500 in

one day, which is the cumulative total she transferred on 24 May 2021. I don't think the first payment of £3,500 would have been unusual enough to have prompted an intervention. But by the time she came to make the second payment of £6,000 to the same payee, it then became an odd pattern of spending that Danske Bank should have identified as being unusual and uncharacteristic.

If Danske Bank had contacted Ms S and asked her further questions and for more of the basic surrounding context, I have no reason to doubt she would have explained that she was investing in bonds through what she thought was Citibank.

Ms S has explained that the Kiyanpay account she made the payments to was not hers; it belonged to the scammer and I can see they had directed her to send funds to this account in order to make the "investment". If Danske Bank had asked what the payment was for, it would have discovered that she was paying an e-money account with Kiyanpay that belonged to someone else, rather than depositing her funds directly with Citibank. This would have alerted any reasonable banker that something was not right and would have indicated she was at risk of financial harm. It could have also asked how she came across the investment, where she would have explained it was through an advert on social media, which is another common hallmark of an investment scam.

Danske Bank could have issued Ms S with a scam warning and asked her to carry out further checks on the people/company she thought she was dealing with, where it's likely she would have discovered the regulatory warnings placed online about clone firms of Citibank (see the warning published by the FCA in March 2020, for example). I think this would have likely prevented her from making any further payments. I'm therefore satisfied that a relevant and meaningful warning from Danske Bank would have likely exposed the scam and prevented Ms S's loss. So, I intend asking it to refund the money she lost from the £6,000 payment on 24 May 2021 (i.e. the point it ought to have intervened) onwards.

I've also thought about whether Danske Bank did enough to try and recover the funds after Ms S reported the fraud. I can see that it reached out to Kiyanpay the same day Ms S got in contact, but it has not been able to recover the funds. So, I don't think there was anything more the bank could have done to try and recover the money.

I've also considered whether Ms S should be held partly responsible for her loss, as there is a general principle that consumers must take responsibility for their decisions. In this instance, I do think that Ms S is partly responsible for her loss. I appreciate she carried out a basic level of research into the investment bonds, but it doesn't appear she carried out much due diligence on the company she was in contact with.

There were also several red flags that ought to have alerted her that something was not right, such as the email address of the advisor not matching that of Citibank's, and the fact that she was having to pay an e-money account with Kiyanpay. It ought to have appeared odd that a multinational firm such as Citibank would require such an intermediary. The investment brochure also does not contain any contact details or website addresses for Citibank. However, it doesn't appear that Ms S acted upon any of these warning signs, and there was enough information in the public domain about the clone firm that would have put her on notice that she was likely being scammed. I therefore consider a reduction of 20% of her total refund is reasonable in these circumstances.

Ms S said that she was looking for somewhere secure to invest her money following her divorce where she could protect it for the future. She has said that if she hadn't lost her money to the scam, she would have still likely invested in a similar legitimate ESG (environmental, social, governance) scheme. Ms S says she was looking for a secure investment, so it seems more likely than not that she would have opted for a low-risk option, such as a green fixed rate savings bond. However, the rates Ms S was promised by the scammer (i.e. around 5%) would not have been available at the time she was looking to invest, and the only low-risk options would have been at around the Bank of England published rate for fixed rate bonds.

Given Ms S originally looked to invest in May 2021, this means she has been deprived of the interest she would have otherwise earned in a fixed rate bond for around two years (assuming she would have taken a two-year fixed rate bond). I therefore intend asking Danske Bank to pay compound interest on the total award at the Bank of England published rate for two-year fixed rate bonds as of May 2021 (that being the rate published at the end of April 2021 – 0.31%).

I invited both parties to respond. Ms S accepted my provisional decision, but Danske Bank disagreed. In summary, it considered the loss to be out of scope for it to be held liable as Ms S had paid a Kiyanpay account that was held in her own name, meaning that the loss originated from this point rather than her account with Danske Bank. With regards to Ms S's contributory negligence, it also submitted that the rate of return offered was implausibly high.

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 have also taken into consideration the points that Danske Bank has raised in response to my provisional decision. But they have not changed my overall conclusions. I'll explain why.

Danske Bank says Ms S knowingly and willingly transferred funds to her own account at Kiyanpay, and that this is not disputed by her. However, this is very much disputed by Ms S. As I set out in my provisional decision, she said that the account was not hers and that it belonged to the scammer. She had simply been told where to send the funds.

I appreciate Danske Bank may have received onboarding documentation from Kiyanpay to show that the account was in Ms S's name. But just because the account was in her name, it does not mean that she opened it herself. We often see scams where the scammer requests the customer's identification as part of the "investment", which is then used by them to open an account in the customer's name without their knowledge or consent, which appears to be the case here.

Ms S has confirmed that she did not open any account with Kiyanpay, and that the scammer sent her the payment details and simply said it was an intermediary account where they would collect the funds before sending to Citibank. This is corroborated by the evidence Ms S has provided in the form of the invoice sent by the scammer, which includes payment instructions to send the money to a Kiyanpay account. None of these details include her name or indicate that the account was held in her name. And if Ms S was aware of the account, she seemingly wouldn't have needed payment instructions to have been sent to her, as she would have already been in possession of these.

I've also seen no evidence or testimony to suggest that Ms S sent the funds from the Kiyanpay account to the scammer either. She has further stated that she reached out to Kiyanpay to complain when she realised she had been scammed, but that they refused to

deal with her. This further leads me to believe that she didn't open the account, otherwise there would be no reason why Kiyanpay wouldn't be able to respond to her directly if she was indeed a customer of theirs. All these factors lead me to believe that it was the scammer who opened the account, which may well have been in Ms S's name, but was likely done without her knowledge or consent.

Therefore, I don't consider the loss to be out of scope for Danske Bank to be held liable here. In any event, even if Ms S did open the account herself, that still wouldn't mean this would fall out of consideration for Danske Bank to be held liable, as the point of loss can still be said to have originated from her Danske Bank account. Our service has a well-established approach in this respect, and we have published many decisions on our website setting this out.

I've also considered Danske Bank's submissions regarding Ms S's contributory negligence, as it submits that the rate of return she was offered was unrealistic. But while I accept it would have been unrealistic compared to fixed rate savings bonds that were on offer at the time, I don't think the rates she was offered could be considered too good to be true for the sort of bonds she was looking for. The rates she was offered ranged from 3% to 6.5%, for example, which I don't think can be considered *implausible*. So, I'm satisfied the 20% deduction I originally proposed in my provisional decision for Ms S's contributory negligence is appropriate in the circumstances.

As a result, I see no reason to depart from the conclusions reached in my provisional decision, and I uphold this complaint.

My final decision

For the reasons given above, I uphold this complaint and direct Northern Bank Limited (trading as Danske Bank) to refund the payments Ms S made to the scammer – from (and including) the £6,000 payment made on 24 May 2021 onwards – less a 20% deduction for Ms S's own contributory negligence.

Danske Bank should also pay annually compounded interest on this total amount at the rate of 0.31% from 24 May 2021 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 16 March 2023.

Jack Ferris
Ombudsman