

The complaint

Mr and Mrs L complain that National Westminster Bank Plc (NatWest) won't refund money they lost to an investment scam.

Mr and Mrs L are represented by a firm that I'll refer to as 'C'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2017 Mr L sought investment opportunities and came across a firm I'll refer to as 'H'. Mr L made various payments to H, from another banking provider, for investment purposes. And he's explained that, later that year, he was informed it would be in his best interests to transfer his investment funds to H's sister firm, which I'll refer to as 'A', due to the previous broker being fired for rogue trading. Before agreeing to this, and as he wasn't yet ready to withdraw his profits, Mr L undertook due diligence on A. This, he says, included checking the Financial Conduct Authority (FCA) register that showed A were an investment firm based in the European economic area (EEA) and had 'passported in' using their authorisation from their home state's regulator.

Mr L went on to make two payments, from his NatWest bank account jointly held with Mrs L, as part of the investment:

Date	Type	Amount
20 March 2018	International Transfer	£35,509.60
24 May 2018	Faster payment	£5,000
Total:		£40,509.60

Mr L realised he'd scammed when he didn't receive the funds from the investment as expected. C complained to NatWest, on Mr and Mrs L behalf, in April 2023 and – in summary – said:

- Mr L had a reasonable basis to believe the scam was genuine.
- Mr L made the £35,509.60 payment in branch. And he was taken into a room by the manager who only asked simple questions – such as whether he'd been forced into making it. Mr L doesn't recall any probing questions being asked.
- When Mr L reported the scam in late May 2019, he was informed by a member of NatWest that the payment he made was to a known scam payee. This however should've been explained to Mr L at the point he made the payment and, had this happened, he wouldn't have gone ahead with it.
- NatWest failed to protect Mr and Mrs L from the scam despite the payment(s) showing the obvious hallmarks of investment fraud. And so, they should've made

enquiries about the payments and provided an effective scam warning – which, in turn, would've prevented them being made.

- To settle the complaint, they said Mr and Mrs L would accept reimbursement of the monies lost plus 8% interest and compensation.

NatWest didn't uphold the complaint and, in short, they said:

- They attempted to recover the funds on a best endeavour basis but, the beneficiary banks confirmed they couldn't be returned.
- The payments were made before the Contingent Reimbursement Model (CRM) code came into effect.
- There wasn't anything in their records to show their agent told Mr L that the payment went to a well-known scam payee. It's more likely their agent said the situation sounded like a scam, but the agent wouldn't have had information on the payee firm and so wouldn't have commented in that way.
- They couldn't confirm whether the £5,000 payment was flagged by their fraud prevention system due to the age of the transaction. But if a transaction isn't flagged for additional checks, and which is later reported as fraud, this is not a bank error. And as this payment was genuinely made by Mr L there weren't, therefore, any concerns at that time on the validity of the payment.
- They're expected to make payments in accordance with their customer's instructions. And they can only deviate from this when they have reasonable grounds to suspect a payment could result in a customer being the victim of fraud.
- They provide appropriate and relevant warning messages on their online banking facility to warn customers about the types of scams they see. Information is also available on their website and in branch.

The complaint was referred to the Financial Ombudsman. Our Investigator considered the complaint but he didn't think NatWest had to do anything further. He explained that due to the time that has passed, there wasn't any records of what questions were asked of Mr L when he made the payments. But had NatWest appropriately questioned Mr L, he wasn't persuaded this would've made a difference – as he didn't think NatWest would've identified he was being scammed. This was because Mr L had confirmed he'd undertaken due diligence before proceeding with the investment, which thereby led him to believe it was legitimate. This included checking the FCA register, which confirmed A was authorised to carry out regulated activities in the UK. Our Investigator also noted that he hadn't seen anything, such as online reviews, that identified A as a scam firm. It's therefore more likely that, upon questioning, Mr L would've conveyed this to NatWest and given them the assurance he was making payments to a legitimate investment. Furthermore, our Investigator added that there wasn't any evidence, other than Mr L's testimony, that NatWest told him the payee was linked to scammers as he claimed.

C disagreed and so the matter has been passed to me to decide. In short, they said:

- Mr L provided the date and time of the call in which he says he was informed by NatWest that the payee was known to be linked and used by scammers.
- If the bank were aware of this, he questioned why the payments weren't stopped.

- The FCA merely proved A was an affiliate, and not registered in the UK as it was under an EEA jurisdiction.
- The payments were unusual against normal expenditure.
- NatWest should've been concerned and asked contextualised questions about the payments which, as Mr L wasn't asked to lie to his bank, would've led to them uncovering the scam.

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 sorry Mr and Mrs L have lost a significant amount of money and I don't underestimate the impact this has had on them. But while I know this won't be the outcome they're hoping for, I don't think NatWest has acted unfairly by not refunding their loss for similar reasons to our Investigator. I'll explain why.

The payments made were before the CRM code – which can offer a potential means of obtaining a refund following Authorised Push Payment (APP) scams - came into effect. And so, they're not covered by it. I've therefore considered whether NatWest should reimburse Mr and Mrs L under any of their other obligations.

In broad terms, the starting position in law is that a bank is expected to process payments their customer authorises them to make. It isn't disputed that Mr L knowingly made the payments from the joint account he holds with Mrs L and so, I'm satisfied they were authorised. Therefore, under the Payment Services Regulations and the terms of their account, NatWest were expected to process the payments and Mr and Mrs L are presumed liable for the loss in the first instance.

However, taking into account regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for NatWest to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Mr L to NatWest were unusual enough - in relation to the typical account activity – to have expected NatWest to have identified Mr and Mrs L were at risk of financial harm from fraud.

Having reviewed Mr and Mrs L's account statements, I think the £35,509.60 international transfer was unusual and out of character based on their typical account usage. So, I think NatWest would've had sufficient reason to be concerned that Mr and Mrs L could be at risk of financial harm from fraud. I therefore would've expected NatWest to have carried out additional checks before processing it – particularly as the payment was made in the branch and there was interaction allowing them to do so.

Mr L says the bank only asked him simple questions about the £35,509.60 payment. NatWest hasn't, unfortunately, been able to provide any records of this discussion due to the time that has passed. I can't therefore be sure what was discussed. And so, I've thought about what would've most likely have happened if NatWest had asked Mr L appropriate questions about the purpose of the payment.

I've no reason to think Mr L wouldn't have been honest with NatWest. So, I think he would've explained the payment was being made for investment purposes. Given NatWest's

awareness of the prevalence of investment scams, it would've been reasonable for them to have asked further probing questions to establish whether Mr L was at risk of making a payment as part of a scam. And I think appropriate questioning would've uncovered that it was Mr L who approached the scam firm – which, by this point, he was dealing with A. And they'd come across extremely knowledgeable and professional, without any pressure having been applied for him to make the payments. He'd also seen a steady increase in profits from the amounts previously invested. And he'd undertaken due diligence on A before proceeding to invest with them, including checking the FCA register.

As it has been established, when Mr L checked the FCA register, it showed A were allowed to carry out regulated activities through passporting their authorisation from their home state within the EEA. I'm aware that Mr L has pointed out that A weren't authorised directly by the FCA. But, nevertheless, they had the required permissions to provide their services within the UK. And ensuring customers are dealing with firms that have the relevant permissions to carry out regulated activities, according to the FCA register, is an important check banks can undertake to protect them from scams.

I appreciate Mr L was deceived by A and I'm not placing blame on him for what happened – as it seems he took steps to ensure he was dealing with a legitimate firm and relied upon information available on the FCA register as part his checks. But I likewise don't think I can hold NatWest responsible as I'm not persuaded they ought reasonably to have been able to identify Mr L was making the payment as part of an investment scam. I think they would've been sufficiently reassured by the due diligence Mr L had carried out and so, they would've believed it was being made for legitimate reasons. And, as our Investigator explained, it seems there wasn't any information online at the time which suggested A was a scam firm. Therefore, even if NatWest had advised Mr L to carry out further checks before proceeding with the payment, I don't think this would've made a difference either.

NatWest can't confirm whether the £5,000 payment was flagged by their fraud prevention system due to the age of the transaction. But while I think the first scam payment was unusual and out of character based on Mr and Mrs L's typical account activity, I don't think this second payment was. Because of this, I wouldn't have expected NatWest to have carried out any additional checks before processing it.

I'm aware Mr L says that, when he reported the scam to NatWest, he was informed the payee was known to them as being used by scammers. There isn't a recording of this call available and I haven't seen any documentary evidence of this conversation either. NatWest also say their agent wouldn't have commented in this way as they wouldn't have had information on the company. I can't know with any certainty what was discussed between Mr L and the fraud agent. But in the absence of anything to support Mr L's testimony, I don't think I can reasonably conclude that NatWest allowed payments to be made to a payee that was known to them as being used by scammers (and told Mr L this).

Upon being informed of the scam, NatWest contacted the beneficiary banks to recover Mr and Mrs L's funds – which is what I would expect in these circumstances. Unfortunately, they were informed by the beneficiary banks this wouldn't be possible as the funds had been removed. I'm satisfied NatWest acted reasonably in this respect.

I'm sympathetic to Mr and Mrs L's situation as I realise they've suffered a significant financial loss. But it would only be fair for me to direct NatWest to refund their loss if I thought the bank was responsible – and I'm not persuaded that this was the case. For the above reasons, I think NatWest has acted fairly and so I'm not going to tell them to do anything further.

My final decision

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 and Mrs L to accept or reject my decision before 23 February 2024.

Daniel O'Dell
Ombudsman