

The complaint

Mr H complains that National Westminster Bank Plc (NatWest) – as the recipient bank, didn't do enough to prevent him losing money to an alleged scam.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

In October 2017 Mr H transferred £5,000 from his bank account with 'L' to an account held with NatWest. The payment was to a company called 'F' for investment purposes. Mr H says he received a few interest payments, but these stopped, and F eventually entered insolvency proceedings. Mr H now believes F were operating fraudulently.

In summary Mr H said that NatWest had failed to pick up on "*what appears to be a Ponzi scheme*" and that it had "*missed red flags*" and several "*opportunities*" – when opening F's account and after – to identify areas of concern about the possible fraudulent use of the recipient account. And had it not failed, Mr H considers his loss (along with many other investors) would've been prevented. Mr H believes the opening and operation of the recipient account did not comply with NatWest's Know Your Customer (KYC), Customer Due Diligence (CDD) and Anti-Money Laundering (AML) obligations and, for these reasons, the money (£5,000) he'd paid into the recipient account should be refunded with interest at 8%, and that appropriate compensation should be paid for NatWest's "*apparent failings*". Mr H says many other investors are similarly affected. He believes that NatWest has failed in its duty to this whole group and ought to consider reimbursing all the investors involved. He asks NatWest to assist in unravelling the alleged fraud and to take investigative, preventative, and remedial action to trace all the investors funds and freeze not just the recipient account, but also the directors personal accounts and the accounts of several other associated companies.

NatWest didn't uphold Mr H's complaint. In short, it said that it couldn't agree that there had been an error in the opening or monitoring of the recipient account. It recommended Mr H contact his own bank – L.

The matter was referred to our service, and Mr H said as a minimum NatWest should refund the capital sum he'd invested (£5,000) plus £2,028.02 in uncapitalised interest. Our Investigator didn't think we could consider all of Mr H's complaint. She explained the relationship under which we could consider Mr H's complaint, that being DISP 2.7.6R(2B) only applies in relation to a complaint concerning an act or omission which occurred on or after 31 January 2019. She said for these reasons she couldn't consider Mr H's complaint points about the due diligence carried out by NatWest when onboarding its customer or whether NatWest failed to prevent Mr H's loss (in relation to the receipt and paying away of his funds) as all these acts took place before 31 January 2019. And for the aspects of Mr H's complaint which our service can consider (NatWest's response when Mr H notified it of the alleged fraud in 2023), she didn't recommend the complaint should be upheld.

Mr H asked for the complaint to be reviewed by an Ombudsman. He disagreed with the Investigator's outcome and made further submissions in support of his complaint. He shared documents that have been obtained by another investor, which contained the opinion of a legal adviser about whether, on balance of probabilities, F (and linked enterprises) have been operating a scam, and the possible failings that may apply to bank accounts operated by F. Mr H also shared a comprehensive dossier which contained: a group structure chart; investment brochures; certifications of the registration of a charge and deeds; notice of administrators proposals; extracts from online articles about renewable energy; correspondence between another investor and the Environmental Agency; and the administrators first report to the creditor's committee. Mr H believes these are entirely relevant to his complaint and should be taken into consideration, together with all the other documentation and evidence he has previously supplied.

He also argued that the rules introduced on 31 January 2019 were intended to strengthen existing protection for retail bank customers, not to provide an "escape route" for banks who had failed to comply with their obligations under existing rules, regulations, and codes of best practice. Mr H feels strongly that the Investigators findings suggest entirely the opposite, and effectively shields banks from investigation into alleged wrongdoing. He feels such a position cannot be regarded as protecting the rights, or best interests of the bank's customers or users of the bank's payment and money transfer services. He asserts the Investigators view is unacceptably biased against the consumer, and in favour of the financial services industry.

For the avoidance of ambiguity and so that both parties would be clear about the scope of what we can and can't look into I issued a jurisdiction decision first, setting out the extent of Mr H's complaint I can consider. And this decision is only about the aspects of Mr H's complaint I do have the power to investigate.

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.

It wasn't until 2023 (which was several years after the payment was made) that Mr H informed NatWest that he believes the payment he made to F was as a result of an alleged scam. I'm satisfied NatWest's response suggesting Mr H contact his own bank – L, from where the payment originated was appropriate. This is the standard industry procedure to raise a claim of an alleged fraud or scam. And whilst I'm not suggesting this is the case here, this is in part to mitigate the risk of malicious claims. I'm likewise satisfied that by that point; all Mr H's funds had been moved / spent from the recipient account. And so anything NatWest did or didn't do, wouldn't have impacted whether a successful recovery could have been made from that account. I understand Mr H asked NatWest to trace and recover his money beyond the account which received it – but there is no obligation, nor a requirement, on it to do so.

So in summary, there isn't a fair and reasonable basis upon which I can ask NatWest to do more (within the context of my jurisdiction) to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 April 2024.

Sonal Matharu
Ombudsman