

The complaint

Mr S complains that National Westminster Bank Plc (NatWest) didn't do enough to prevent the loss he suffered when he sent money to its customer's account as the result of an alleged scam.

Mr S has used a representative to bring his complaint, but for ease of reading, I'll mostly just refer to and will ascribe the representative's comments to Mr S.

What happened

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

Mr S says he was the victim of a scam. He made two payments totalling £66,000 for investment purposes, to a company called 'S'. The payments were made from his bank account with 'B' to an account held with NatWest. One payment was made in December 2018 and the other in February 2019. The nature of the investment was a hotel room property venture. Mr S says initially he received the monthly interest payments as expected. These stopped after February 2020, and later that year S entered administration. Covid was cited as a reason for failure, but Mr S claims, based on information that has since come to light, that S were operating a fraudulent "Ponzi scheme".

Mr S complained to NatWest in 2023. He said that it had likely failed: to meet its obligations when allowing its customer's account to be opened; in its monitoring of the recipient account; and in its response when notified of the fraud. Mr S asked that NatWest refund his loss. NatWest didn't uphold his complaint. The matter was referred to our service. Our Investigator didn't think we could consider all of Mr S' complaint. She explained the relationship under which we could consider Mr 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 the opening of the recipient account and one of Mr S' payments were outside the scope of our jurisdiction. And for what she could consider, she didn't recommend the complaint should be upheld.

Mr S 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. I first issued a jurisdiction decision setting out the extent of Mr S' complaint I can consider. Followed by a provisional decision in which I said:

"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'm intending on reaching the same outcome as the Investigator, in so much as, I can't uphold Mr S' complaint. I know this will be disappointing for Mr S, so I'll explain why. And as I'm providing a greater level of detail and some different reasoning, I'm issuing this provisional decision to give both parties a further opportunity to comment before finalising my decision.

I note Mr S has made submissions in support of why he believes he's been the victim of a scam. But in the circumstances of this complaint, I don't think I need to make a finding about this point to reach what is a fair and reasonable outcome.

I say this because even if I were to accept Mr S has fallen victim to a scam. For me to fairly uphold this complaint, I'd need to be persuaded that there was a failure that took place on or after 31 January 2019, and but for that failure, Mr S' loss would have been prevented. Ultimately, I've not seen anything that persuades me that there has been a failing by NatWest in the monitoring of its customer's account (within the context of my jurisdiction) nor the steps it took when Mr S notified it of the alleged authorised push payment (APP) fraud, where it can fairly be concluded, that its actions, or failure to act were reasonably the cause of Mr S' loss. I say this for the following reasons:

- *Our jurisdiction only allows me to comment on NatWest's acts or omissions on or after 31 January 2019. And within that context, I don't think anything NatWest did regarding their monitoring of the account prior to the receipt of Mr S' payment has impacted the loss he has suffered. I say this because from the evidence I've seen S had access to multiple accounts with different firms, either directly or through linked enterprises. So even if NatWest ought to have acted in relation to this particular account, I don't think Mr S would have ended up in a meaningfully different position. It's most likely that had NatWest blocked or closed the account, Mr S would instead have been persuaded to continue to make payments to other accounts S had access to. So, I don't think his loss was preventable in that way.*
- *I can't fairly say NatWest did anything wrong when crediting Mr S' payment to the recipient account or in allowing the funds it represented to be paid away without taking any further action. I say this because against the backdrop of how the account was being operated; its general pattern of use; and the prior account activity the arrival and paying away of Mr S' funds wasn't in any way unusual or suspicious. And from what NatWest has shared, the recipient account was established (for several years) and operating without any concerns prior to the arrival of Mr S' funds.*
- *Mr S highlights the magnitude of the alleged scam and suggests the account should be considered in the context of a group scam. He says given the sheer volume of victims involved, with each contributing substantial amounts to the account, other victims should also be considered. I'm not sure if what Mr S is suggesting is that our service should consider the matter in the same way that a court would a class action. But if it is, this is not something I can do. Our service is set up to determine each case (within the scope of our jurisdiction) individually based on its own merits. And here, as I'm required to, I've looked at the individual circumstances of Mr S' complaint. This doesn't mean that I haven't taken into consideration the activity on the account or thought about Mr S' payment within the broader context of the other transactions. In fact, I have, and this is largely the basis for me saying that Mr S' payment or the movement/spending of those funds wouldn't have stood out to NatWest as suspicious or unusual in the context of the general use of the account.*

- *In response to the Investigator's assessment Mr S also said that the recipient account was being operated by a known fraudster, and that NatWest allowed them to receive tens of thousands of pounds from pensioners, for a business venture that didn't have any regulatory status. His submissions heavily focus on the investment scheme lacking regulatory approval/permissions and this being something NatWest ought to have questioned. I appreciate the position taken by Mr S, that NatWest should have exercised greater vigilance in its monitoring of the recipient account, and that its alleged negligence in doing so has resulted in his loss. But as I've set out above, it isn't enough for there to have been a failure (within the context of my jurisdiction), I'd need to be able to also conclude that the said failure fairly and reasonably caused Mr S' loss – which I can't in these circumstances. I say this because it's not illegal to offer unregulated investment opportunities nor would this be a basis for saying that NatWest shouldn't provide an account to businesses who do. The amount and type of risk NatWest is prepared to take is a commercial decision for it to make. And the nature of its customers business would determine the level of due diligence it carries out. It goes without saying that if NatWest did, or reasonably should have had concerns about the operation of the account then I'd have expected it to have investigated this. But it isn't a banks role to forensically investigate, regulate or audit a limited company to whom it provides a banking service. Amongst other obligations, it is to have measures and checks in place to monitor the account for potential misappropriation of funds. I've also not seen any evidence to support that the persons operating the account at the time were 'known fraudsters' as Mr S has alleged. Nor would NatWest have known the level of detail (i.e., pensioners) about the senders of the funds through the monitoring of the account's transactional activity. Taking this altogether even if I were to agree (which to be clear I don't) with Mr S that NatWest ought to have done more between 31 January 2019 and the end of February 2019 when the funds from Mr S' second payment had been transferred out of the recipient account, I'm not persuaded that any reasonable level of scrutiny by NatWest during that period would have resulted in Mr S' loss being prevented. Nor can I reasonably conclude that any alleged failure in the monitoring of S' account after the point Mr S' funds were paid away would have impacted the loss he has suffered.*
- *From what I can see B has not sent notification of alleged APP fraud to NatWest. It wasn't until 2023 (which was several years after the payment was made) that Mr S informed NatWest that he believes the payments he made to one of its customer's accounts was as a result of an alleged scam. I'm satisfied NatWest's response that it couldn't return any funds to Mr S was appropriate, and at that point there wasn't much more that NatWest could reasonably have done to assist in the recovery of Mr S' funds from the recipient account.*

I sympathise with Mr S for the situation in which he finds himself. But as I'm not persuaded his loss is as a result of failings by NatWest, there isn't a reasonable basis upon which I can direct it to do more to resolve this complaint."

I asked both parties to send me any further comments and/or information they want me to consider. NatWest said it had nothing further to provide. Mr S said he does not wish to be bound by my decision and understands this is the final stage of the process.

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.

As neither party has put forward any new evidence, or information which changes my mind. I see no reason to depart from the findings I made in my provisional decision.

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 S to accept or reject my decision before 25 April 2024.

Sonal Matharu
Ombudsman