

## **The complaint**

Mrs W complains that National Westminster Bank Plc (NatWest) is refusing to refund her the amount she lost as the result of a scam.

Mrs W is being represented by a third party. To keep things simple, I will refer to Mrs W throughout my decision.

## **What happened**

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mrs W and her husband were recommended an investment by a family member in a company called Dolphin Capital (X). X specialised in property development and guaranteed a fixed rate of return.

Mrs W and her husband carried out their own research into X and found that the German government had offered the opportunity to buy property at a low cost so that the property could be renovated.

Having not found anything negative about X online Mrs W and her husband decided to invest and sent a payment to BK Law (the solicitors handling the payments for X) for the value of £50,023 by the method of transfer in February 2014.

When the investment matured two years later Mrs W and her husband reinvested the full amount. However, when the investment was due to mature for the second time Mrs W was unable to contact X or find any information about the investment. X then went out of business.

In 2022 Mrs W approached a solicitor who explained it was likely Mrs W had fallen victim to a scam.

Our Investigator considered Mrs W's complaint but didn't think it should be upheld. Mrs W disagreed, so this complaint has been passed to me to decide.

## **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.

Not every complaint referred to us and categorised as an investment trading scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investment traders may have promoted these products using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not

necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself, or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

In simpler terms, some merchants may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to fraud.

Having looked at all the information available I don't think I have enough to say X was operating a scam.

But even if X was operating a scam, it doesn't necessarily follow that NatWest would need to refund the money that has been lost.

*Should NatWest have reasonably prevented the payment Mrs W made?*

It has been accepted that Mrs W authorised the payment that was made from her account with NatWest, albeit on X's instruction. So, the starting point here is that Mrs W is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether NatWest should have intervened when Mrs W made the disputed payment. And if it had intervened, would it have been able to prevent the loss taking place.

The payment Mrs W made was of a high value and out of character for the way she usually operated her account, so I think NatWest's systems should have been triggered and it should have intervened.

Had NatWest intervened as I think it should have, I would have expected it to discuss the payment with Mrs W before it was released and if it had had any concerns, to have warned Mrs W of a potential scam.

I think Mrs W would have been honest about the reason she was making the payment had NatWest asked her about it. Mrs W would have likely told NatWest that she was making a payment in relation to an investment that had been recommended to her by a friend and that she had researched herself before making the decision to invest. At most I would have expected NatWest to recommend Mrs W to carry out further research before making the payment but having looked myself there doesn't appear to have been anything available at the time Mrs W made the payment to suggest she was falling victim to a scam.

So, even if NatWest did intervene when Mrs W made the payment, I don't think it would have uncovered anything of concern that would have prevented Mrs W from making it. So, I don't think NatWest missed an opportunity to prevent the loss, and it is not responsible.

Mrs W has explained that the fact that the investment was in another country should have caused NatWest concerns. But many investments take place overseas and I don't think this means NatWest should have thought at the time that a scam was taking place.

Mrs W has also quoted several rules and regulations and pointed to several past decisions published by our service. But this does not change my decision.

Each case we look at is decided on its own individual merits. In this case I firstly don't have enough to say Mrs W fell victim to a scam, and secondly, I don't think NatWest was able to prevent the loss even if she did.

Most of the information Mrs W has provided points to the actions of NatWest, and that it should have intervened in the payment made by Mrs W. But I have already explained that I agree with this statement, and although Mrs W feels there were red flags about X that should have caused NatWest concerns that could have prevented the loss, as I've explained above and have given my reasons, I disagree.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 31 May 2024.

Terry Woodham  
**Ombudsman**