

The complaint

Miss B complains that National Westminster Bank Plc (“NatWest”) won’t refund £10,000 she says she lost to an investment scam in May 2018.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Miss B paid £10,000 from her NatWest account to buy shares in a company (“F”), which she purchased through a broker (“C”) via two payments of £5,000 on 30 April and 9 May 2018.

Miss B said she researched the broker and found they were registered on Companies House at the time of investing. She said there were no FCA warnings about the broker either, which gave her confidence that she was dealing with a legitimate company. Miss B also said she received invites to shareholder meetings and received regular updates about the investment.

However, she now believes the investment to have been a scam as she didn’t receive any return on her investment. Miss B believes it was a scam as she was instructed by C to pay her investment to a different company (“A”). C’s website has also since been taken down. She also thinks the returns she was told to expect of 95p per £1 invested is too good to be true and wouldn’t have been offered by a legitimate investment, so she filed a fraud claim with NatWest and said it should have done more to protect her money.

NatWest said that it wouldn’t refund the payment Miss B had made. It said the Contingent Reimbursement Model (“CRM Code”) didn’t apply as the payment was made before the Code came into force. NatWest also said the money had been sent to A (an accountancy firm) which was still an active company, so it said she would need to raise it directly with the company she’d paid. Unhappy with this, Miss B referred the matter to our service.

Our investigator didn’t uphold Miss B’s complaint. He didn’t believe there was enough evidence to suggest that she had been defrauded by C, rather than losing her money through a bad investment. Even if it was a scam, he didn’t think any intervention by NatWest would have led to her realising this when she invested her money in May 2018. So, the investigator didn’t consider NatWest could fairly be held liable for the money Miss B had lost. Miss B disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided not to uphold it. I’ll explain why.

The relevant regulations and industry guidance makes it clear that banks ought reasonably to protect consumers from the risk of financial harm, including fraud and scams. But the expectation to warn customers of the risk of such financial harm will only reasonably have

been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that NatWest could have delayed the payments while concerns about the payee were discussed with Miss B.

So, I would need to be satisfied that the F and/or C were operating a scam when the disputed payment was made in May 2018 in order to expect NatWest to have done anything further here. When determining this, I've borne in mind that certain high-risk investment traders may use sales methods, or communication styles that can be seen to be unfair. Especially, when considering the financial losses incurred because of a disappointing return on an investment that's been promoted. Even so, not all complaints to us involving failed investments are in fact a scam. While the ways and means of some of these businesses can be viewed as unreasonable or even unethical – that doesn't necessarily mean they amount to the high legal threshold or burden of proof for *fraud*.

I've consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), as well as the FCA's own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about F or C at the time Miss B made the disputed payment.

I appreciate that C may not have been authorised by the FCA to carry out brokerage or investment services, and that the returns Miss B was offered may have been unrealistic. But this is not enough in itself to determine that the investment was *fraudulent*. The company was registered on Companies House and also submitted accounts between November 2017 and November 2018, which wouldn't be typical of a company that was operating a scam. I also understand that Miss B sent her money to company A instead of directly to C. But it appears that A is an accountancy firm, which she was told dealt with all of C's accounting and financial transactions.

I note that Miss B also received a payment of £5,400 from company A on 31 July 2018 into another of her NatWest accounts, which would be significant and highly unusual amount for a company to pay that was involved in a scam, as it amounted to over half of the £10,000 payment Miss B had sent from her account. Miss B says she thought this was a payment from NatWest's fraud team, but there is no evidence or record of her ever having raised a claim with NatWest at the time. Indeed, correspondence between her and C indicates that she was expecting £5,400 back from the broker in July 2018, so it's not clear why she is now saying she thought it was paid by Natwest's fraud team.

I note that Miss B has also provided copies of her correspondence with the police in February 2020, who said that an in-depth investigation was conducted into C with numerous enquiries exhausted, but that that they were unable to prove any fraud or money laundering offences. Miss B has also been in continuing contact with individuals from C, which would be highly unusual for a company that was operating a scam.

So, overall I'm not persuaded there's enough evidence to suggest that F or C can be said to have been fraudulent or operating a scam at the time Miss B made her payment. As a result, NatWest's wouldn't have been expected to intervene. There was the inevitable risk of Miss B's investment returning a loss based on market performance. But NatWest isn't required to protect its consumers from the risk of financial loss due to investment advice or bad bargains. Therefore, I don't consider NatWest acted unfairly by failing to intervene.

Even if I were to accept that C was operating a scam at the time, and that NatWest should have intervened, there would have been very little to suggest that the investment firm was operating a scam. Indeed, Miss B has said herself that she had researched the company and had no reason to suspect she was being scammed at the time. So, any warning from

NatWest to carry out further research on the investment firm's legitimacy would have been unlikely to yield any results that would have made Miss B think she was being scammed, so I don't think an intervention would have ultimately prevented the payments from being made in any event.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 26 June 2024.

Jack Ferris
Ombudsman