

The complaint

Mr C complains that National Westminster Bank Plc paid a £30,000 cheque to a party that wasn't the intended payee. He wants to be reimbursed.

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 2015 Mr C decided to invest in a firm I'll refer to as 'D'. He wrote a cheque for £30,000 payable to a firm I'll refer to as 'B' - a law firm that received monies for D. The cheque debited Mr C's account on 4 November 2015.

D filed for liquidation on 20 July 2020. And B issued a letter on 27 July 2020 which said that the last date they received monies for a specific investment for D was 3 September 2014.

Mr C contacted NatWest shortly after this about the cheque payment he made to B as part of his research into what happened. NatWest responded on 27 August 2020 and provided a copy of the cheque to Mr C.

Mr C complained to NatWest on 31 March 2023. He explained that he'd been the victim of an investment scam, and it was his belief that NatWest had paid the £30,000 cheque to someone other than the named payee (B) on the cheque. And so, he wanted NatWest to trace this cheque and reimburse him the £30,000.

NatWest provided a final response to the complaint on 4 April 2023. They said they were unable to look into the complaint as it had been made outside the Financial Conduct Authority's (FCA) time limits – with the cheque paid from Mr C's account more than six years ago and more than three years from when he ought to have realised there was a problem. NatWest also said the cheque couldn't be traced as it was paid more than six years ago.

Mr C corresponded with NatWest further about this matter, but their position didn't change. Unhappy with this, Mr C referred his complaint to the Financial Ombudsman on 28 June 2023.

Our Investigator thought the complaint had been brought in time but didn't uphold it. Mr C disagreed and so the matter has been passed to me to decide. I sent my provisional decision on this complaint on 11 November 2024. I said:

"I've firstly considered whether this is a complaint I can consider as I'm aware that NatWest has raised concerns that it has been made too late. The Financial Ombudsman is bound by certain rules that are set out by the financial industry regulator; the FCA. These are known as the DISP Rules and are contained in the FCA's Handbook. DISP 2.8.2R says that we cannot look at a complaint if it is referred to us more than six years after the event complained of, or (if later) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.

Here, the event complained about is the cheque that debited Mr C's account on 4 November 2015. Mr C has clearly referred his complaint to the Financial Ombudsman more than six years after this event. I've therefore thought about when Mr C ought reasonably to have become aware that this cheque might not have been paid to the intended payee. And while Mr C would've known the cheque debited his account at the time, I haven't seen anything to show he would've had reason to suspect it might not have been paid to the intended payee before B issued their letter of 20 July 2020. It therefore follows that Mr C had three years from that point to refer his complaint – that being up to 20 July 2023. As Mr C referred this complaint to us on 28 June 2023, I'm satisfied it has been brought within the required time limits.

Although this is a complaint I can consider, I'm not currently minded to uphold it. At which point, I want to reassure Mr C that I've given careful consideration to his complaint and all the points he's put forward. If, however, I don't mention a particular point, it's not because I haven't considered it but I've focussed instead on what I believe to be important to the outcome of this complaint. And here, I must consider whether NatWest is required to reimburse Mr C the £30,000 cheque funds. I know this won't be the outcome Mr C is hoping for, but I don't think they are. I'll explain why.

NatWest say the cheque cannot be traced. Unfortunately, this is quite common in such situations whereby significant time has passed and only limited information is now available. Because of this, and while I've noted B's letter of 20 July 2020, I can't know with certainty where the funds were paid – and specifically whether B, on behalf of D, received the funds as Mr C intended. But putting that aside, I haven't seen anything to show that NatWest processed the cheque incorrectly at the time.

Mr C has confirmed that he authorised this payment instruction – as he wrote, signed and issued the cheque to the named payee (B). But unlike other electronic payments, a cheque cannot be screened at the point of payment (which is the writing and issuing of the cheque). Instead, NatWest would've only become aware of the request for payment once the cheque had been deposited and sent to them for settlement by the collecting bank via 'clearing'.

Upon receiving the cheque via clearing, NatWest were firstly required to check its authenticity – which isn't in question here. After this, NatWest would've been expected to ensure sufficient funds were available and that no stops had been placed on the cheque – which, similarly, wasn't an issue at the time either. Following these checks, the account is then debited with the funds paid to the collecting bank who, in turn, credit the payee's account.

NatWest could've only returned a cheque as unpaid if it had permissible reasons to do so – such as, but not limited to: cheque fraud, differing amounts and words, missing or specimen signature mismatch, cheque alteration not correctly validated or if it was sure the cheque had been obtained fraudulently and there was an attempt to misappropriate the funds. In this case, I've not seen anything to show that NatWest would've had such a reason to return the cheque as unpaid.

It is the collecting bank's responsibility, and not NatWest's, to ensure the account to which a cheque is to be paid is held in the same name as the named payee on the cheque. NatWest sent the funds in good faith that the collecting bank had carried out such a check – which, I would add, I can't say whether happened or not.

I'm aware Mr C has referred to security checks carried out by NatWest in relation to other unrelated cheques he has presented to them to be paid into his own account.

And he questions, if NatWest required further proof of entitlement to those funds (which were of a lower value), why they didn't apply the same level of rigour to the £30,000 payment. If they had, he says the cheque would've been stopped and he wouldn't have lost the funds to the investment scam with D. While I've noted Mr C's point here, as per above, the checks carried out by NatWest on these unrelated cheques were undertaken in the capacity of them being the collecting bank (and not as the drawer's bank). And so, NatWest had a responsibility to ensure Mr C was entitled to these funds – whereas, with the £30,000 cheque, NatWest were the drawer's bank and relied on the collecting bank to carry out such a check. Ultimately, I'm satisfied NatWest correctly followed Mr C's payment instruction at the time.

Mr C has also suggested that even if NatWest isn't responsible for the £30,000 being paid to the incorrect payee, they should still repay him and claim it back from whichever organisation is responsible. Although I understand Mr C's reasoning here, due to the cheque not being traceable, I can't know what exactly happened to the funds at the time – including whether the funds were or weren't paid to an account in the name of B. But even if they weren't, I can only direct NatWest to refund Mr C for losses that they are responsible for – and not those which another financial firm may be responsible for.

I appreciate Mr C feels very strongly about this matter. But for the above reasons, I can't fairly and reasonably ask NatWest to reimburse Mr C's loss or do anything more to resolve this complaint.

My provisional decision

My provisional decision is that I do not uphold this complaint."

Mr C didn't agree and, in short, provided the following points for my consideration:

- NatWest say the cheque cannot be traced and, while he understands this, he questions why this is needed? The Ombudsman says he can't know with certainty where the funds were paid – and specifically whether B, on behalf of D, received the funds. He disagrees with this point. B didn't receive the funds, and this is known for certain and can be verified by contacting B directly – which is how the 20 July 2020 letter was obtained.
- It isn't known where the funds were actually paid, but this remains subject of an international criminal investigation.
- He agrees NatWest isn't the collecting bank, and that the collecting bank should've checked the account to which his cheque was to be paid matched the same name as the named payee on the cheque. He can't say what the collecting bank did or didn't do.
- The funds most likely passed through the collecting bank, or the payment service provider that was providing an account for D at the time, but he cannot find out further information as he isn't considered an 'eligible complainant' against those firms.
- Under the DISP rules, NatWest is the only firm he can complain about. In a phone conversation with NatWest in June 2023, when asked why he hadn't tried to recover the funds in August 2020, he explained he was still finding out what happened and wasn't aware of any such option or process. No further discussion on this occurred because NatWest told him his complaint was outside of the 'time limits' - although the Ombudsman has since decided otherwise. He initially felt, in both 2020 and 2023, that NatWest were being helpful and co-operative, but this changed, and the door was shut firmly when they wrongly told him that he was outside of the 'time limits' to complain.

- He believes NatWest is responsible for the £30,000 being paid to the incorrect payee. And so, they should repay him and claim the funds back from whichever organisation is responsible.

NatWest confirmed receipt of the provisional decision but didn't add anything further.

Now that both parties have had an opportunity to respond, I can proceed to making my final decision on Mr C's complaint.

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 that Mr C has lost a significant amount of money, and I don't underestimate the impact this has had on him. I also understand why he's doing everything he can to try to recover these funds. But while I know this won't be the outcome Mr C is hoping for, I don't think NatWest is required to reimburse his loss. I'll explain why.

I haven't received any further points in respect of the Financial Ombudsman's jurisdiction to consider this complaint. And so, in the absence of this, I see no reason to depart from the above. I therefore remain of the view this is a complaint I can consider.

Mr C has accepted that the collecting bank, and not NatWest, ought to have checked the account to which the cheque was to be paid was held in the same name as the named payee on the cheque. It's unclear whether the collecting bank did this or not. But other than B's letter of 27 July 2020, I haven't seen anything to indicate where the funds were paid. And so, while I've noted Mr C's points, without such evidence that unfortunately isn't available due to the time has since passed, I cannot know with absolute certainty whether the funds were or weren't paid to an account in the name of B (whether the intended payee or otherwise).

I therefore remain of the view that NatWest sent the funds in good faith that the collecting bank had carried out such a check. And so, I'm satisfied NatWest correctly followed Mr C's payment instruction at the time.

I appreciate Mr C's point that he is unable to complain about the other firms – the collecting bank and D's account provider – as he isn't an 'eligible complainant'. And again, he suggests that NatWest should repay him and seek to reclaim these funds from whichever organisation is responsible. While I sympathise with Mr C's position in this respect, as I've explained, I can only direct NatWest to refund Mr C for losses that they are responsible for – and not those which another financial firm may be responsible for.

I realise Mr C will be disappointed by this but, for the above reasons and those I set out in my provisional decision, I don't think NatWest is required to reimburse Mr C's loss.

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 C to accept or reject my decision before 29 December 2024.

Daniel O'Dell
Ombudsman