

The complaint

X complains about National Westminster Bank Plc (NatWest).

He says that NatWest didn't do enough to protect him when he became the victim of a scam and would like it to refund him the money he has lost.

What happened

X was introduced to an investment with a company I will refer to as 'B', by an individual that said that the investment was an excellent opportunity.

X made a payment of £340,000 to the investment (plus a £23 CHAPS fee) on 12 March 2018.

Between May 2018 and February 2020, he received returns of £127,097.82.

X says that rather than a genuine investment opportunity, B was actually a Ponzi scheme. He says that it made false representations that were misleading or false, and that it was a scam, rather than a failed investment, and made a complaint to NatWest about the matter.

NatWest didn't uphold X's complaint. It said that at the time the payment was made, there was nothing to suggest that X was at risk of financial harm, and that there were no warnings that B was going to go into administration, so it wouldn't have been able to prevent his loss.

X didn't agree, so he brought his complaint to this Service. Our Investigator looked into things but said that while there was no evidence that NatWest had intervened in the payment X made to B, they didn't think that NatWest would have been able to uncover the scam and prevent the loss.

X asked for an Ombudsman to make a final decision, so the complaint has been passed to me.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances. Having done so, I've decided not to uphold this complaint. I know this will be disappointing for X, so I'll explain why.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

The payment X made pre-dates the inception of the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code') on 28 May 2019. The CRM Code can't be applied retrospectively, so it doesn't apply to this transaction.

At the time the transaction was made, NatWest should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

Considering the size of the payment X made, I'm satisfied that NatWest should have intervened in what X was doing and asked him some questions about the payment. NatWest hasn't been able to provide anything that shows it intervened with the payment but considering that payment was made over six years ago, this isn't surprising or unexpected – businesses aren't required to keep records indefinitely.

However, in order for me to uphold this complaint I would have to think that an intervention from NatWest would have prevented what happened here, and I don't think that it would.

Had NatWest intervened, I think it would have asked him about what he was doing and why – and to check with X that he wasn't being forced to make the payment. I think X would have explained that he was making an investment that had been recommended to him, and that he wanted to make the payment. And that NatWest would then have asked him how he came across the investment and if he was happy he had conducted research into the investment and was satisfied with what he had found.

I understand that X's representative has serious concerns about the level of risk disclosed to X, who was told that his returns were 'guaranteed', and that the documentation provided to him contradicted this on several occasions, instead stating that the investment involved a significant degree of risk.

The representative says that had X been questioned appropriately about the investment, X would have divulged that the returns were 'guaranteed' – which NatWest should have known wasn't realistic and warned him about this.

However, I haven't been provided with anything that shows that X was told his investment was guaranteed – and while I accept that he may have been told this verbally, the paperwork he was provided by B about the investment makes multiple references to a significant level of risk. I think that given the level of money X was investing he would have read this documentation himself and seen that it wasn't risk free as he says he was told.

I'm also mindful that NatWest wasn't acting in the capacity of an advisor – so it wasn't its role to closely examine any documentation X may have provided to it, and to comment on the suitability of the investment or level of risk associated. Instead, it would have needed to satisfy itself that X was making the payment of his own accord, and that from the information available at the time, making the payment to a genuine business.

While further information about B has now come to light and has caused concerns around the legitimacy of the supposed investment, at the point the payment was being made this

was not available – and so I don't think that NatWest would have considered that X was at risk from financial harm, and I think X would have been able to satisfy NatWest that he was making a payment to a genuine investment opportunity.

I am very sorry that X has lost a lot of money, to what now appears to have been an elaborate scam. But I can't ask NatWest to refund him his losses when I don't think it could reasonably have been expected to uncover the scam at the time the payment was made.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 4 December 2024.

Claire Pugh
Ombudsman