

## The complaint

Mr K complains that National Westminster Bank Plc (NatWest) didn't protect him from an investment scam.

Mr K is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr K in this decision.

## What happened

Mr K says that in 2018 he was looking to invest some money he'd made from recently renovating a property; and his brother's father-in-law (who I'll refer to here as Mr H) introduced him to an investment in a company (which I'll refer to here as 'H'). Mr K says that Mr H represented a broker company (which I'll refer to here as 'D').

Another company (which I'll refer to here as 'P') facilitated the transfer of the funds Mr K was investing with 'H'.

Mr K says 'H' promised a refund of the capital within 12 months, plus paying 5% interest per month. Mr K said he chose not to take the monthly returns, instead choosing to leave the funds invested for five years plus to maximise his profits. And on 17 November 2018 Mr K completed a '*letter of intent*' with 'P' confirming this option.

Mr K made the following payment in branch as part of the investment:

| Date       | Amount                   |
|------------|--------------------------|
| 19/11/2018 | £30,000 (plus a £23 fee) |

Mr K says the payment wasn't flagged by NatWest and that no warnings were provided to him before it was processed.

Mr K received statements from 'P' between December 2018 and November 2019. But says these statements ceased, and he's been unable to recover any funds from 'P' or 'H'.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively. Mr K has since tried to recover his funds by way of the liquidators, but this has been without success.

On 20 November 2023 Mr K made a complaint to NatWest. In short, he said he'd been the victim of scam and that NatWest hadn't done enough to protect him. Mr K therefore held NatWest responsible for his loss. He wanted it to refund him the £30,000 together with 8% interest and £1,000 for the distress and inconvenience caused.

NatWest replied to say it had done nothing wrong. Essentially, it said no banking error had been made and it had been Mr K's choice to invest in a high-risk investment; and that he was therefore responsible for any resulting loss. NatWest said this was a civil dispute – not a scam.

NatWest said that due to the passing of time, it had no paperwork from the in branch transaction, but said that Mr K would've been questioned about it as it was over £5,000. However, NatWest didn't think this would've uncovered anything untoward about 'H' or 'P' at that time.

Mr K referred his complaint to the Financial Ombudsman. In summary, he said he was a young, inexperienced investor, and if NatWest had warned him about the risks associated with unregulated investments, his loss would've been prevented.

One of our Investigators considered the complaint but didn't uphold it. She said recent information suggested it was likely Mr K had unfortunately fallen victim to a scam. But she didn't think this would've been apparent to either NatWest or Mr K at the time the £30,000 payment was made. She also didn't think NatWest had missed an opportunity to recover the lost funds.

Mr K didn't agree. He said NatWest hadn't taken appropriate action to ensure the £30,000 payment wasn't fraudulent. He said it was irrelevant what the outcome of that action would've been – rather NatWest had failed in its duty to protect him and to warn him of the risks associated with unregulated forex investment schemes. Mr K said if it had, he would've discovered that 'H' wasn't regulated, at which point his loss could've been prevented.

Mr K also reiterated that this investment wasn't suitable for him – given his financial situation and lack of investment experience. He said he has suffered both financially and personally because of this loss.

I've been asked to review everything afresh and reach a final decision.

### **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've decided not to uphold this complaint. I know this is not the answer Mr K was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation he's found himself in, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether NatWest can fairly and reasonably be held responsible for Mr K's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say at the outset that I've considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether NatWest could've prevented Mr K's loss.

I accept the £30,000 transaction Mr K made was an authorised payment. So, Mr K is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as NatWest, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether NatWest ought reasonably to have held such suspicions or concerns in relation to Mr K's £30,000 payment — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if NatWest acted fairly and reasonably in its dealings with Mr K when he made the £30,000 payment. Specifically, whether it should've done more than it did before processing the payment – and if it had, would that have made a difference. I also need to decide if NatWest could've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by NatWest prior to processing Mr K's payment instruction. This was a significantly larger than usual payment for Mr K's account, and one being made to a new payee. Indeed, NatWest has said that as this

payment was made in branch and was over £5,000, Mr K would've been questioned about it before it was processed.

But for me to find it fair and reasonable that NatWest should refund the payment to Mr K requires more than a finding that NatWest ought to have intervened.

I would need to find not only that NatWest failed to intervene where it ought reasonably to have done so — but crucially I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by NatWest wouldn't have revealed the payment was part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented it from being made.

In thinking about this, I've considered what a proportionate intervention by NatWest at the relevant time would've constituted, and then what I think the result of such an intervention would most likely have been.

To reiterate, NatWest's primary obligation was to carry out Mr K's instruction without delay. It wasn't to concern itself with the wisdom or risks of his payment decision.

In particular, NatWest didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment NatWest was recommending or even endorsing.

NatWest's role here was to make the payment that Mr K had told it to make. Mr K had already decided on that investment. And I find that NatWest couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr K's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr K (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of NatWest in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for NatWest, as a matter of good industry practice, to have taken steps to establish more information about this payment when it spoke to Mr K in branch. What matters here is what those steps might be expected to have uncovered at the time.

While there may now be significant concerns about the operation of 'H' and 'P', and the legitimacy of the investment, I must consider what NatWest could reasonably have established during a proportionate enquiry to Mr K about his payment back in November 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mr K has provided about 'H' and 'P', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either NatWest or Mr K at the time the £30,000 payment was made.

I think it's also likely Mr K would've told NatWest that he had documents from 'P' confirming the terms of the investment, together with a '*confirmation of understanding form*' which all appeared entirely genuine. And that he'd made an informed decision as to the terms of the investment to maximise his profits over the longer term.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that these concerns only began to surface in the public domain after the relevant payment was made by Mr K.

I've thought next about how Mr K found out about the investment. Mr K was introduced to 'H' by Mr H on behalf of 'D', an unregulated broker.

Had NatWest asked Mr K who'd advised him about the investment, then the involvement of Mr H and 'D' would've likely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice; and might be made available to clients of an unregulated adviser (as Mr K was).

So, the status of 'D' and the investment weren't something that would necessarily have indicated 'H' or 'P' was fraudulent (or that the investment was a scam) at the time Mr K asked NatWest to make the payment.

Further to that, I've not seen any evidence to suggest Mr K ever doubted the advice he was being given by Mr H. Whilst he has since noticed errors in the financial information Mr H provided on the client suitability form when setting up the investment, I've not seen anything to suggest Mr K questioned this at the time.

In addition, Mr K has said he had '*fully trusted*' Mr H as he was family; and had no reason to think this wasn't a legitimate investment. Mr K said Mr H also told him the investment had been:

*'... returning 5% monthly profits and had been working for a couple of years for his other clients'.*

And when 'P' stopped sending statements to Mr K he said Mr H assured him:

*'the money was still there but ['H'/'P'] were just getting tied up in international banking laws so they couldn't move/send money'.*

Given this communication, I don't think, on balance, that any advice or warning from NatWest about 'D' would've likely resonated with Mr K or given him any cause for concern. And any concerns that might've been raised with Mr K about 'H' or 'P' would've likely, in my opinion, have been allayed by Mr H.

All things considered; I don't think it would've been readily apparent in November 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think NatWest could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would've led to significant doubts about the legitimacy of 'H' or 'P' at that point in time. Neither do I think Mr K could've uncovered such information at the time – he was not at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by NatWest to have been proportionate to the perceived level of risk of 'H' or 'P' being fraudulent. I don't think that a proportionate enquiry in November 2018 would've led to either NatWest or Mr K considering 'H' or 'P' being anything other than legitimate. With that in mind, and all things considered, I'm not persuaded in the circumstances of this case that NatWest was at fault for carrying out the relevant payment instruction, or for not preventing Mr K from making his payment.

In terms of trying to recover the lost funds; I'd expect NatWest to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mr K contacted NatWest. Furthermore, both 'H' and 'P' had gone into liquidation by this point.

Therefore, I can't say NatWest had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than three years before.

I have a great deal of sympathy for Mr K and the loss he's suffered. But it would only be fair for me to direct NatWest to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

### **My final decision**

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 K to accept or reject my decision **before 3 December 2024**.

Anna Jackson  
**Ombudsman**