

The complaint

Mr F complains that Northern Bank Limited trading as Danske Bank ('Danske') didn't do enough to protect him when he fell victim to an investment scam.

What happened

In late 2017, Mr F was cold called by a merchant purporting to offer binary options investments. He understood this merchant was regulated and he could make a large sum investing with it, so he began sending funds from a number of his accounts. Mr F sent funds to invest using his Danske credit card and his Danske current account between January and February 2018.

Mr F believed he was dealing with the merchant for several more months after the above payments. In July 2018, the investment platform disappeared, and Mr F understood they had gone bankrupt. He believed all his funds were lost.

Mr F was however then contacted by an employee of the merchant who explained he could help Mr F recover his funds. The employee suggested Mr F should've been sold an insurance product when he invested. He said he could arrange for Mr F to pay for this now and then use this to recover his lost money. Mr F paid the fee for the insurance in August 2018 and sent a payment on 6 September 2018 to cover tax on the investment withdrawal, but received no funds back. It was in fact a scam investment and Mr F had never invested.

Mr F complained to Danske in May 2023 about being the victim of this investment scam. He did raise a complaint in 2018 about trying to recover his funds via chargeback, but it was not upheld. There was no discussion in the 2018 complaint about Mr F being a scam victim, at this time he understood the investment company had just gone bankrupt. Danske didn't uphold Mr F's 2023 complaint, so he came to our service.

Our investigator partially upheld Mr F's complaint. The investigator upheld the complaint about the original scam payments from the second payment onwards. But he held Mr F and Danske equally liable. He didn't uphold the complaint about the first recovery scam.

Danske said it wouldn't have detected the payments were going to a merchant with a FCA warning. And Mr F maintained he wasn't liable as he didn't realise he was dealing with a scam merchant or know to do research. I issued a provisional decision on this case in October 2024. My findings were as follows:

I've considered longstanding regulatory expectations and requirements, and what I consider to be good industry practice for firms when processing payments. In line with this, Danske ought to have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances.

Danske is aware that for card payments, we consider it should have a watchlist which is updated regularly to include the names of merchants that appear on published warning lists – such as the Financial Conduct Authority's ('FCA') warning list and the International Organizations of Securities Commissions (IOSCO) website. Card

payments are requested by the merchant, so Danske would be able to see who is requesting the money and could compare it to the watchlist with an automated process.

I have reviewed Mr F's accounts and the payments made because of this scam. Mr F made the first payment from his Danske current account via bank transfer. Due to this, Danske wouldn't have been able to perform the above automatic checks on the beneficiary. So I've then considered whether there were any other concerning features about this payment that meant Danske should've made additional checks before processing it.

While Mr F was sending £10,000, this wasn't unusually high for his account. He sent legitimate payments of around £10,000 and £20,000 in December 2017. And made a cheque payment for nearly £10,000 the week before this scam in January 2018. So I don't consider this activity indicated Mr F may be the victim or fraud or that this was a high-risk payment, so that Danske ought to have intervened. I understand Mr F has raised that Danske didn't intervene on these genuine payments either, but Danske wasn't required to do so unless there was an obvious risk of fraud or a scam – which there wasn't with these.

However, the second payment Mr F made through Danske was a credit card payment directly to the scammer. So I do consider this should've been detected by Danske and it should've questioned Mr F about what he was doing and why he was paying this merchant.

A concerning warning was published by the FCA on 4 July 2017 about the scam merchant Mr F paid. As this was over seven months before the first payment was attempted, Danske's warning list should've included this merchant and the payment shouldn't have been processed without a proportionate intervention.

Danske has explained it didn't have a system in place to detect payments in the way I have described. But I am considering what it ought to have done, not what it could do based on the systems it had chosen to implement at the time.

Having thought about the circumstances of this scam, I think Danske could've prevented Mr F's loss had it appropriately intervened.

Considering the situation here, I think a human intervention was proportionate. Had Danske intervened in this way, by sharing the concerning knowledge about the merchant and appropriately questioning Mr F about the circumstances around why he was making this payment, I'm confident this would've prevented him making any further payments. He had only recently been introduced to this opportunity and hadn't done research on the merchant, so wasn't aware of the warning or the significance of this. And as he had little knowledge of this kind of investing, I don't think he would've gone ahead.

Due to this I think he should be refunded all the payments he made towards the initial investment.

I've then considered the two payments Mr F made towards the first recovery scam he was involved with. I consider these payments should be considered a direct consequential loss of the first scam and so should also be refunded.

My reason for this is that Mr F believed he was still dealing with and paying the same investment firm when he made these payments. He understood he was buying an

insurance product he should've taken out at the start of the investment and that he was paying tax on his original profits. I'm satisfied that there is no break in the chain of causation here, so these payments should also be refunded, as Mr F wouldn't have sent these two payments if he'd not originally invested with the scam merchant.

I've then considered whether Mr F's actions in this case were reasonable and whether he ought to share any responsibility for his losses here.

Having thought about the circumstances of this scam, I think Mr F also holds some responsibility for his losses here, so liability should be shared between the parties. I say this because, as above, Mr F hadn't appropriately researched the company he was investing with.

The FCA warning was easily accessible to Mr F and had he performed an online search for reviews of the scam firm, he would've seen this information. Mr F has said he didn't have any doubts and wouldn't have known how to check the scam firm even if he did. But I can't agree that not doing any research, such as an online search, is reasonable – especially as he says he was cold called. Mr F parted with a large sum of money in a short space of time without knowing a lot about the company he was involved with or whether it was operating legitimately. I accept they told him they were regulated, but Mr F needed to take reasonable care with his funds and so verify this information. And some basic research should've highlighted to him that this wasn't true, and he was likely about to be scammed.

I have considered Mr F's age and the other vulnerabilities that have been raised, including the difficult personal situation he'd recently gone through when he was scammed. But I don't agree this means he should take no responsibility for the losses here. Despite these factors, he was able to engage with the scammer and the investment. And later was able to research ways to try and recover his funds. So I'm satisfied he could've done the fairly low-level research required that would've revealed concerns in this case. And so I'm satisfied that responsibility should be equally shared between both parties.

In response, Danske asked me to confirm the transactions it was being asked to include in its refund calculations. Mr F, via his representative, disagreed with the deduction for contributory negligence. He explained he couldn't recall if he'd done research into the firm, but said that even if he had, he may not have found the FCA warning or understood what it meant. And he referenced a published decision from 2022 involving the same scam trader, where no deduction had been made.

I clarified the redress with both parties, confirming that none of the first payment made would be refunded and then listing the payments to be partially refunded. And now the case has been returned to me for review.

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.

Neither Danske nor Mr F provided any further comments in relation to my reasoning surrounding the FCA warning. Or for only upholding this case from the second payment onwards. But Mr F has commented on this in a linked case, so I have reconsidered my findings in relation to this payment.

I'm still satisfied that there were no concerns for Danske when Mr F made the first transfer.

While it was a relatively large payment, it wasn't apparent it was going towards a known scam merchant, and it wasn't out of character with other spending on Mr F's account. He had made other payments of this size (and more) in recent months. So I still conclude that this didn't indicate an obviously fraud risk which Danske should've responded to. I'm therefore not asking Danske to refund any of this payment.

However I still conclude Danske should have stopped the second payment Mr F made as this was on his credit card and clearly going to a merchant with a FCA warning. It should've spoken to Mr F at this time, and I conclude this would've unravelled the scam. Mr F disagrees with the deduction I have made for contributory negligence.

I've carefully considered his arguments for why he shouldn't be held as liable at all, or at least equally liable to a firm, considering their expertise and knowledge. I've also reviewed the published decision he shared with me. The role of our service is to decide cases on their individual merits. So while I accept there appear to be similarities between Mr F's situation and the case in the published decision, I need to review Mr F's situation and the information I hold.

Danske does have a duty to protect Mr F from fraud when there's an identifiable risk. But Mr F also has responsibility for his own funds, and this is why I do still consider he should be jointly held responsible for what happened. While I accept Danske failed in its duty, I can't agree that this failure means Mr F should hold no responsibility at all.

I accept that doing an internet search may not be commonplace for all investments, but context is key here. In this case, Mr F was cold-called – so while he didn't know the merchant wasn't genuine, he also didn't know they were. He didn't know anything about them bar what they had told him. If Mr F had been introduced to the investment via a regulated broker or another trusted party, I may have reached a different outcome. But Mr F received unsolicited contact and then put a great deal of trust and money in the party that rung him.

Mr F can't recall if he did any research, but if he didn't, I consider this does amount to contributory negligence – as it isn't reasonable to simply rely on information given to you by an unknown third-party who cold-calls you. And if Mr F had done research, he should have found concerning information.

Due to the time passed, it's not possible to accurately see exactly what the research Mr F ought to have done (on his chosen search engine) would've shown. Features available on other search engines do show the FCA warning would've shown up at the time – and as they search in a similar way, I consider it's highly likely it would've displayed to him. This is also because this part of the FCA website is deliberately set up so that consumers can find and access this warning information. Mr F has said he may not have understood the warning even if he had seen it. But considering he's said the scammer told him they were regulated, I think an article stating they weren't – and which says to avoid dealing with them, would've been enough of a red flag for him to end contact.

The information I have on Mr F's other case also indicates that he quite quickly got involved with this investment. He made several payments on his credit card the same day to start this investment. And within a month of investing, he was sending large sums. Considering this, I am satisfied he needed to have done more to be sure the opportunity was genuine. And there was information available, had he looked for it, that would've told him it wasn't.

I recognise that Mr F is an individual with vulnerabilities and Danske had access to more sophisticated fraud detection systems. But he didn't need a sophisticated system to verify the legitimacy of this merchant. I'm aware Mr F was able to use the internet and carry out searches, so he could've done this and taken steps to understand the published information before investing. While the scam merchant did go to some lengths to appear legitimate, Mr F also did have information accessible to him to evidence this was not the case.

Mr F has fallen victim to a sophisticated and cruel scam and I recognise the impact this has had on him. But in this case, I consider both parties had the opportunity to prevent the loss at an early stage, so my decision remains to share liability equally between the parties.

Putting things right

Northern Bank Limited trading as Danske Bank to:

- Refund Mr F the payments he made to the original scam from 23 January 2018 to 23 February 2018; and the two payments made on 28 August 2018 and 6 September 2018; minus any credits received from the scam (that haven't already been accounted for). Danske should make a 50% deduction on this amount for Mr F's contributory negligence
- For the current account payments, Danske should pay 8% simple interest on these payments from the date of loss to the date it refunds the money
- For the credit card payments, it should re-work his credit card statement from that time and refund any credit card interest applied in association with the refunded payments
- If this re-work creates a credit balance, Danske should then pay 8% simple interest on this credit amount from the date of loss to the date it refunds the money

My final decision

For the reasons set out above, I partially uphold Mr F's complaint against Northern Bank Limited trading as Danske Bank.

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

Amy Osborne
Ombudsman