

## **The complaint**

Mr S complains that National Westminster Bank Plc (“NatWest”) won’t refund a payment sent as part of a scam.

Mr S has made his complaint through representatives, but for ease I’ve only referred to Mr S throughout the decision.

## **What happened**

The background to the complaint is well known to both parties so I won’t repeat it in detail here. But, in summary, Mr S fell victim to scam and was tricked into sending over £165,000 to what he thought was a legitimate Forex investment scheme. The ‘investment’ was made via an international transfer for the whole amount, carried out in branch during October 2017. The scheme promised to refund the capital within 12 months plus interest of 5% per month, whilst also paying 3% to its introducers.

The opportunity had been recommended to Mr S by a family friend. Having seen the returns the friend had made since investing, Mr S was persuaded the Forex scheme was legitimate and wanted to invest too. He also visited the company’s offices, met with the owners, and saw the trading in action. Initially he received credits from the investment over a number of months that totalled £25,000. But in 2018 the investors stopped receiving payments, and the company entered liquidation in 2019. After that point correspondence was sent to investors, effectively reassuring them that the liquidation of the UK company wouldn’t affect the overseas investments. However, Mr S lost contact with the investment company in 2023.

In September 2023 a complaint was raised with NatWest. Mr S said the investment was a scam, as there was no evidence the company ever had the means to generate the returns it promised. He complained that the bank had not flagged the payment as suspicious, nor had it provided adequate scam advice. NatWest’s final response said additional checks weren’t triggered as it was confident Mr S had made the payment, so there weren’t any concerns about its validity. According to the bank it appeared to be a high risk investment that had failed. So NatWest’s letter suggested that Mr S contacted the administrators for the investment company, as it believed the matter was a civil dispute.

Mr S was unhappy with the response from NatWest, so referred the complaint to our service. One of our investigators reviewed everything and didn’t think the complaint should be upheld. Due to the time that had passed there wasn’t any record of the checks NatWest said it would have carried out for a transaction of this size. But the investigator didn’t think the bank would have been able to uncover the scam, even with further questioning, due to how legitimate the investment appeared. She felt NatWest would have been reassured, as Mr S was, by the amount of diligence he’d carried out – and the returns his friend had seen over the course of a year.

Mr S didn’t agree and wanted to appeal the investigator’s outcome. He accepted there was no duty on NatWest to protect him from a bad bargain or provide investment advice. But he argued that had the bank prompted him to check whether the payee was registered with the FCA, and flagged the high risks associated with unregulated investments, he might have

looked more closely into the company. Mr S believed if he'd received an investment scam warning, and realised the company wasn't regulated, he might not have gone ahead with it.

The investigator's view remained the same. So the complaint was passed to me for a final decision on the matter.

### **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'm not upholding the complaint, for the same reasons given by the last investigator. I appreciate that will come as a great disappointment to Mr S, who has sadly lost a lot of money to a cruel and sophisticated scam. I have a great deal of sympathy for what he's been put through at the hands of the fraudsters. But, on balance, I can't fairly say NatWest should be held responsible for the loss. That's because I don't consider the bank would reasonably have been able to uncover that Mr S was being scammed, even if it had intervened sufficiently on the payment. I've explained why below.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account and the Payment Services Regulations (PSR's). Mr S 'authorised' the transactions in question (he made them), albeit under the false belief they were for a legitimate investment opportunity. So NatWest were under an obligation to process the payments – but that isn't the end of the story, as far as the bank's responsibility goes.

While that's the starting position, I've also taken into account the regulator's rules and guidance; relevant codes of practice, along with what I consider to have been good industry practice at the time. That means I consider NatWest should fairly and reasonably have been on the lookout for the possibility of Authorised Push Payment fraud at the time, and intervened if there were clear indications its customer might be at risk.

NatWest has a difficult balance to strike in how it configures its systems to detect unusual activity indicative of a higher risk of fraud. There are many millions of payments made each day and it would not be possible or reasonable to expect NatWest (or any business) to check each one. In situations where NatWest does decide to carry out further checks, I would expect that intervention to be proportionate to the circumstances of the payment.

NatWest doesn't have any records going back that far to confirm whether it flagged the payment as suspicious or made enquiries with Mr S. It says a transaction of this size should have prompted a 'customer protection form' to be completed, but there isn't any evidence to show that happened. The example wording of that form provided by NatWest (though it's unclear whether that relates to date in question) doesn't contain any specific investment scam related warnings or questions. But given the time that's elapsed since the transfer, I wouldn't have necessarily expected there to be more information available.

Mr S says he doesn't recall any questions being asked about what he was doing, and never saw any scam warnings. The passage of time inevitably causes memories to fade – but this was a very big transfer, and he has provided detailed recollections of the event. The example form (if indeed it was used) also supports that no specific questions or warnings related to investment scams would have been prompted. So, I've no reason to disbelieve what Mr S has told us.

The first question for me to decide is whether the disputed transactions ought to have looked concerning enough to have prompted fraud checks. Then, if I deem that further probing was

needed, I'll consider whether those checks would have likely uncovered the scam. It's worth noting that the disputed transaction in this case pre-dates the introduction of the Contingent Reimbursement Model (CRM) in 2019. That was a voluntary scheme, where the signatory banks agreed to refund scam payments in certain scenarios. This payment wouldn't have likely been covered by the CRM code anyway, as it was sent international.

Looking at the activity on the account in the period prior to the disputed transaction, there were only a couple of smaller payments made. This transfer, by comparison, was very large, going international – and virtually drained an account that had long carried a significant balance. So I think there were enough concerning factors evident that NatWest ought to have been on notice Mr S was at an increased risk of financial harm, and carried out fraud checks. Based on Mr S's testimony and the content of the customer protection form I've decided, on balance, the questioning wasn't likely proportionate to the circumstances.

I'm not persuaded, though, that further questioning would have likely uncovered the scam, or meant Mr S didn't proceed with the payment. He has argued that NatWest could have flagged the investment company was unregulated, and that might have meant he took a closer look at the opportunity. But I think Mr S knew (or ought to have known) the investment was high risk – as I've seen it stated on the paperwork that the company was unregulated, that there was no guarantee of returns and all the invested capital could be lost. He also did his own diligence, even visiting the company's offices – and I haven't found anything negative online that would have been visible at the time. Mr S had some knowledge of investments too, having traded in stocks and shares, and so knew the returns promised were higher for a reason. The paperwork looked professional, and all the steps Mr S would have been expecting from a genuine investment company (like a suitability assessment) were carried out. The consistency of the credits his friend received, which were in line with the predicted returns, also would have persuaded him the opportunity was legitimate.

So I don't think any prompting or probing from NatWest would have deterred Mr S from making the payment, as he was confident in the checks he'd carried out. The conversation that ought to have happened with the bank also wouldn't have flagged any risks that he wasn't already aware of. There weren't any aspects of the circumstances I'd have expected NatWest to uncover that were particularly typical of an investment scam, or strongly indicative the opportunity wasn't legitimate. Instead it bore all the hallmarks of an unregulated, high risk, Forex investment scheme. So I don't think an investment scam warning would have resonated, and the bank wasn't responsible for providing suitability advice. Overall, given the sophisticated nature of the scam, I'm not satisfied proportionate invention would have made a difference here.

I've considered whether NatWest could have done more to recover the funds, once it was alerted to the fraud, but I'm satisfied it couldn't have. Even if the receiving bank had been contacted in 2023, there weren't any funds available to recover – as the investment company had been in liquidation since June 2019. I also haven't seen any service failings in how NatWest handled the fraud claim that would otherwise justify an award of compensation.

So, while I'm sorry to disappoint Mr S, and I recognise the huge impact the fraud will have had on him, I just can't fairly say that NatWest ought to have prevented the loss in this case.

### **My final decision**

My final decision is I don't uphold Mr S's complaint about National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 January 2025.

Ryan Miles  
**Ombudsman**