

The complaint

Mr and Mrs T complain that National Westminster Bank Plc (NatWest) didn't protect them from an investment scam.

Mr and Mrs T are being supported in making their complaint by a representative. But for ease, I'll only refer to Mr and Mrs T in this decision.

What happened

Mr and Mrs T have said that a long-term acquaintance introduced them to an investment with a company (which I'll refer to here as 'H') in relation to Forex trading. Mr and Mrs T said their acquaintance had invested in 'H' before and was making good profits. They said he shared information with them about 'H' which they thought '*looked promising*'.

Mr and Mrs T were then provided with information about the terms of the investment by an associated company (which I'll refer to here as 'P'). They've said they didn't carry out any independent checks into 'H' or 'P' before deciding to invest.

Mr and Mrs T entered into a loan agreement with 'H' on 7 September 2018 for the sum of £30,000. They understood the terms of the investment to be monthly returns of 5%, with the capital returned in 12 months.

Another company (which I'll refer to here as 'M') facilitated the transfer of the funds Mr and Mrs T were investing in 'H'.

Mr and Mrs T made the following online payments as part of the investment:

| Date | Amount |
|--------------|----------------|
| 10/9/2018 | £20,000 |
| 11/9/2018 | £10,000 |
| Total | £30,000 |

Mr and Mrs T received a receipt for the £30,000 from 'P', and between October 2018 and May 2019 they received six monthly returns of £1,500 each (totalling £9,000). Mr and Mrs T's outstanding loss is therefore £21,000.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively.

On 16 January 2024 Mr and Mrs T made a complaint to NatWest. In short, they said they'd been the victims of a scam, and that NatWest hadn't done enough to protect them. Mr and Mrs T therefore held NatWest responsible for their loss. They wanted NatWest to refund them, together with 8% interest and £1,000 for the distress and inconvenience caused.

In summary, NatWest said that given the payments were made in 2018 – it couldn't say with any degree of certainty whether they'd been flagged as unusual or suspicious. But NatWest didn't believe Mr and Mrs T had been the victims of a scam. It said this was a high-risk investment that Mr and Mrs T had received returns from; and that they should seek a refund through the liquidation process.

Mr and Mrs T referred their complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, she said NatWest should've questioned Mr and Mrs T about the payments. But given there was no adverse information about 'P' or 'H' available at that time, and because they'd been introduced to the investment by an acquaintance who was receiving returns, our Investigator didn't think further questioning by NatWest would've given it or Mr and Mrs T any obvious cause for concern. She also thought there was no reasonable prospect of NatWest being able to recover the lost funds, nor did she think NatWest needed to pay Mr and Mrs T any compensation.

Mr and Mrs T didn't agree. They concurred with our Investigator that NatWest should've questioned them about the payments – but maintained that such intervention would've prevented their loss.

Mr and Mrs T said given their inexperience as investors, they would've listened to any advice and warnings given by their trusted FCA regulated bank – regardless of the fact their acquaintance was receiving returns on the investment. Mr and Mrs T added:

'When dealing with the hypothetical and the outcomes of what may or may not have been, we do not agree that NatWest should hold no responsibility at all for the outcome given their failure to act appropriately'.

The case has now been passed to me for 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 and Mrs T were hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation they've found themselves in, and I can understand why they'd want to do all they can to recover the money they lost. But I need to decide whether NatWest can fairly and reasonably be held responsible for Mr and Mrs T's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say 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 and Mrs T's loss.

Following a court hearing in July 2020, it's now accepted that Mr and Mrs T have likely been the victims of a scam. But I accept the transactions they made towards the investment were authorised payments. So, Mr and Mrs T are 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 and Mrs T's payments — 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 and Mrs T when they made the payments. Specifically, whether it should've done more than it did before processing the payments – 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 and Mrs T's £20,000 payment instruction on 10 September 2018. This was significantly larger than usual payments for Mr and Mrs T's account in the previous 12 months and was being made to a new payee.

But for me to find it fair and reasonable that NatWest should refund the payments to Mr and Mrs T 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 £20,000 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 and Mrs T's instructions without delay. It wasn't to concern itself with the wisdom or risks of their 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 payments that Mr and Mrs T had told it to make. Mr and Mrs T 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 and Mrs T's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr and Mrs T (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 have been proportionate here for NatWest, as a matter of good industry practice, to have taken steps to establish more information about the £20,000 payment.

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 and Mrs T about their payment back in September 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 and Mrs T have 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 and Mrs T at the time the September 2018 payment was made.

I think it's also likely Mr and Mrs T would've told NatWest that they had documents from 'P' confirming the terms of the investment, together with a loan agreement, which all appeared entirely genuine. And that they had several documents from 'H' about how the investment worked and how the funds were protected. This included reference to the security provided

by the FCA regulated liquidity provider 'H' used, which Mr and Mrs T have suggested provided them with assurances their funds were safe.

Mr and Mrs T have said they would've heeded any warnings NatWest gave them given they were inexperienced investors. But I can see that the information Mr and Mrs T received from 'H' and 'P' makes it clear that the investment is unregulated – and recommends that potential investors seek financial advice. I've seen nothing to suggest Mr and Mrs T did that – nor did they carry out any checks into 'P' or 'H' before deciding to invest, despite the documentation making it clear this was a high-risk unregulated investment. This suggests to me that despite Mr and Mrs T's limited investment experience, they were prepared to take some level of risk; and that they were confident in the investment based on the provided information.

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 £20,000 payment was made by Mr and Mrs T. And so even if Mr and Mrs T *had* carried out checks into 'H' and 'P' in response to any advice or warning given by NatWest – I think it's unlikely they'd have found anything of concern.

I've thought next about how Mr and Mrs T found out about the investment. Mr and Mrs T have said the investment came about via an acquaintance who they'd known for many years and often met up with.

Had NatWest asked Mr and Mrs T who'd advised them about the investment, then the involvement of the acquaintance would've likely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice – as seems to have been the case here.

So, the regulatory status of the investment and how Mr and Mrs T were introduced to it weren't something that would necessarily have indicated 'H' or 'P' were fraudulent (or that the investment was a scam) at the time Mr and Mrs T asked NatWest to make the £20,000 payment.

Further to that, I've not seen any reason to suggest that Mr and Mrs T didn't fully believe and trust their acquaintance's recommendations about investing in 'H'. They've said they weren't pressured into investing, it was their own choice, and that their acquaintance was receiving returns.

Given all this, I don't think, on balance, that any advice or warning from NatWest about how Mr and Mrs T were introduced to the investment would've likely resonated with Mr and Mrs T or given them any cause for concern. And any concerns that might've been raised about 'H' or 'P' would've likely, in my opinion, have been allayed by Mr and Mrs T's acquaintance given they were already investing in 'H' without any apparent problems.

All things considered; I don't think it would've been readily apparent in September 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 and Mrs T could've uncovered such information at the time – they were 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' being fraudulent. I don't think that a proportionate enquiry in September 2018 would've led to either NatWest or Mr and Mrs T considering 'H' or 'P' being anything other than legitimate. With that in mind, and all considered, I'm not persuaded that NatWest was at fault for carrying out the relevant payment instructions, or for not preventing Mr and Mrs T from making their payments.

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 and Mrs T contacted NatWest. Furthermore, both 'H' and 'P' had gone into liquidation by this point and recovery from 'M' wasn't possible as it was acting as a payment processor for 'P'.

Therefore, I can't say NatWest had any reasonable prospect of recovering the funds in 2024 given the passing of time; and because 'H' and 'P' had gone into liquidation more than four years before.

I have a great deal of sympathy for Mr and Mrs T and the loss they've suffered. But it would only be fair for me to direct NatWest to refund their 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 Mrs T and Mr T to accept or reject my decision **before 14 March 2025**.

Anna Jackson
Ombudsman