

## The complaint

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

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

## What happened

Mr S explains that he was first introduced to an investment in a company (which I'll refer to here as 'H') via a broker (who I'll refer to here as Mr AH). Mr S said Mr AH was already investing in 'H' and represented a financial services company (which I'll refer to here as 'D'). 'D' was unregulated.

Mr S says that another unregulated broker (who I'll refer to as Mr R) also recommended the investment to him. And that both brokers had met with representatives of 'H'; and had assured him the investment was '*legitimate and reliable*'.

Mr S understood the terms of the investment to be monthly returns of 5%, with the capital returned in 12 months.

Other companies (which I'll refer to here as 'P' and 'M') facilitated the transfer of the funds Mr S was investing in 'H'.

Mr S made the following online payments as part of the investment:

Date	Amount
24 May 2018	£10,000 ( <i>declined due to incorrect payment details</i> )
25 May 2018	£20,000 ( <i>declined due to incorrect payment details</i> )
29 May 2018	£20,000
30 May 2018	£10,000
27 November 2018	£10,000
<b>Total</b>	<b>£40,000</b>

Between July 2018 and April 2019 Mr S received eleven monthly returns totalling £17,000. Mr S's outstanding loss is therefore £23,000.

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

On 6 November 2023 Mr S made a complaint to NatWest. In short, he said he'd been the victim of a scam, and that NatWest hadn't done enough to protect him. Mr S therefore held NatWest responsible for his loss. He wanted NatWest to refund him the £23,000 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 S had been the victim of a scam and that even if it had questioned him about the payments, there was nothing to indicate 'H' or 'P' weren't legitimate companies,

who have since gone into liquidation. And it said Mr S had received returns on the investment.

Mr S referred his complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. Essentially, he said NatWest should've asked Mr S about the purpose of the payments before processing them.

But given there was no adverse information about 'H' or 'P' available at that time, and because the investment had been introduced to Mr S by a trusted broker - he didn't think further questioning by NatWest would've given it or Mr S any obvious cause for concern.

Our Investigator also thought there was no reasonable prospect of NatWest being able to recover the lost funds, nor did he think NatWest needed to pay Mr S any compensation.

Mr S didn't agree. In summary, he said because the May 2018 payments had initially been declined – and where at odds with his previous account activity, NatWest had ample opportunity to have discussed the payments. And should've warned him about the risks associated with unregulated investments and ensured he wasn't falling victim to a scam.

Mr S said NatWest should've asked to see copies of the literature he had from 'H' about the investment; at which point it would've identified the promised '*unrealistic*' returns and high risks involved.

Mr S said he would've heeded warnings about 'H' from NatWest and '*would've looked further into this*' to check for potential scams and whether 'H' was regulated in the UK. Mr S also clarified that he didn't have an existing professional relationship with Mr AH but confirmed Mr AH had also invested in 'H'.

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 S 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 S'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 have 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 S's loss.

Following a court hearing in July 2020, it's now accepted that Mr S has likely been the victim of a scam. But I accept the transactions he made towards the investment were authorised payments. So, Mr S 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 S'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 S when he made the payments. Specifically, whether it should've done more than it did before processing them – 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 S's £20,000 payment instruction on 29 May 2018. This was significantly larger than usual payments for Mr S's account in the previous 12 months and was being made to a new payee. Further, two payments to the same payee had been declined a few days before due to issues with the beneficiary account.

But for me to find it fair and reasonable that NatWest should refund Mr S 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 S'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 S had told it to make. Mr S 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 S's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr S (which there wasn't here) would have 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 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 S about his payment back in May 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 S 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 S at the time the May 2018 payment was made.

I think it's also likely Mr S would've told NatWest that he had documents from 'H' confirming the terms of the investment which at the time, 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 undoubtedly would've provided Mr S with assurances his funds were safe.

Further, Mr S has said NatWest should've warned him about the risks of unregulated investments. But this was made clear to Mr S in documentation received from 'P' which says:

*'It is possible to lose more than your initial investment. Profits and returns are not guaranteed'.*

The information from 'P' further states:

*'Before you decide to deal with [P] ... you should be aware of all of the associated risks and carefully consider your objectives, financial situation, needs and level of experience. ... [P] recommends that you seek advice from a separate financial advisor. ... you could sustain a total loss of your deposited funds and therefore, you should not speculate with capital that you cannot afford to lose'.*

So, it appears that Mr S had been made fully aware of the risks involved in the investment, and he was getting advice from two financial advisors. This would've all been reassuring to NatWest and Mr S, and in my opinion, makes it less likely that any warning NatWest might've provided to Mr S about unregulated investments would've resonated with him, as he now claims. But even if Mr S *had* been prompted by NatWest to carry out more checks into 'H' or 'P' – I think it's very unlikely he'd have found anything of concern.

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 those concerns only began to surface in the public domain after the £20,000 payment was made by Mr S.

I've thought next about how Mr S found out about the investment. Mr S was introduced to 'H' by Mr AH and Mr R – both of which were unregulated brokers, as clearly stated on their email correspondence with Mr S.

Had NatWest asked Mr S who'd advised him about the investment, then the involvement of Mr AH and Mr R 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 S was).

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

Further to that, I've not seen any evidence to suggest Mr S ever doubted the advice he was being given by Mr AH or Mr R. I can see from the correspondence that they had other clients investing in 'H', Mr AH was himself investing, and they'd told Mr S that they'd both met with representatives of 'H' and had no concerns.

Given the endorsement of two brokers, I don't think, on balance, that any advice or warning from NatWest about Mr AH or Mr R would've likely resonated with Mr S or given him any cause for concern. And any concerns that might've been raised with Mr S about 'H' or 'P' would've likely, in my opinion, have been allayed by Mr AH and/or Mr R.

All things considered; I don't think it would've been readily apparent in May 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' at that point in

time. Neither do I think Mr S could've uncovered such information at the time – he wasn't 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 May 2018 would've led to either NatWest or Mr S 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 instruction, or for not preventing Mr S 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 S 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 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 S 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 S to accept or reject my decision **before 21 March 2025**.

Anna Jackson  
**Ombudsman**