

## **The complaint**

Mr W complains that National Westminster Bank Plc (NatWest) won't refund the money he lost when he fell victim to an investment scam.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision.

In 2015, Mr W says he was recommended to invest in a company I'll refer to as S. Between late 2015 and early 2017, he paid a substantial amount to S from his NatWest accounts.

It was uncovered that S were a scam when family heard Mr W speaking to S. By that point, he was trying to withdraw his funds, but was told they were in escrow and that he had to pay S in order to release the funds. The scam was reported to NatWest, but no complaint was raised until August 2022.

In his complaint, Mr W (via representatives) said NatWest should have done more to protect him. NatWest didn't accept liability for his loss. It said he was questioned about the first few payments to S, and so after that it wasn't deemed suspicious.

Unhappy with NatWest's response, Mr W referred the matter to our service. Our investigator first of all found we couldn't consider some of the payments as they had been raised too late. Both parties agreed we could, and would, only consider payments after 30 August 2016.

For those payments we could consider, the investigator didn't think NatWest should be held liable for the loss. She didn't think it was at fault for not uncovering the scam at the time, nor did she think it could have done more to successfully recover the funds.

Mr W didn't agree. He didn't think NatWest did enough, bearing in mind the amounts he was sending and that he made the payments in branch. He also didn't think his circumstances had adequately been taken into account. And so the case was escalated to me.

## **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 it. I'll explain why.

Although Mr W was scammed, it's accepted that he authorised the payments. In line with the Payment Services Regulations 2009, NatWest was expected to execute his authorised payment instructions without undue delay. So the starting position is that Mr W, rather than NatWest, is liable for the loss he incurred.

However, I have considered whether NatWest ought to have been alert to a fraud risk in relation to these payments – and if so, whether it ought to have been able to prevent (some of) Mr W's fraudulent losses. As we do expect banks to help protect customers from fraud and scams.

First, I've considered whether the payments should have appeared indicative of fraud. We generally consider that to be the case if they fit a known pattern of fraud or otherwise appear significantly out of keeping with the customer's usual account activity.

The payments Mr W has disputed, and which fall within my jurisdiction to consider, were made from two accounts he held (in a personal capacity) with NatWest. He commonly used both accounts to make significant, high value payments. Including what appeared to be other high-value investments. Although we've been told some of these were also (separate) scams, that wasn't known to the bank at the time. So those payments would have affected NatWest's judgment of what constituted normal account activity.

On one account, there were payments between £20,000 and £30,000 in the lead up to a scam payment of around £35,000 in October 2016. The remaining scam payments, made after this, were for much smaller amounts.

On the other account, there were also high value payments in the run up to a scam payment of around £50,000 in October 2016. This included a payment of £52,000 in August 2016, which Mr W has confirmed wasn't connected to the scam. There was then a flurry of even higher value payments before the final scam payments, for similar amounts, in February 2017.

Furthermore, the scam company Mr W was paying hadn't – yet – been publicly identified as of concern by the UK financial regulator. And he had been dealing with them since 2015. As NatWest explained in its final response, it questioned him the first few times he paid the company – and it seems he confirmed he was satisfied with them.

I know Mr W has challenged whether this earlier questioning was robust enough to consider the scam company a 'trusted' payee. As he is aware, I can't consider NatWest's actions in relation to those earlier scam payments. But when considering the *later* payments, I do consider it relevant he had paid the merchant before, over an extended period, following questioning by the bank. So NatWest would have seen the merchant as a payee trusted by Mr W. I think that made the fraud risk less obvious; this was a long-running and sophisticated scam.

Overall, I'm persuaded it was reasonable for NatWest to process the scam payments in line with Mr W's authorised requests. As I'm not convinced it ought to have identified them as indicative of fraud.

That said, I do appreciate the payments were high value, and were made in branch – meaning the bank may well have had set processes in place to check them. Understandably, given the time that has passed, we don't have much detail about what was discussed. So, in the interest of completeness, I've gone on to consider whether targeted questioning about the payments at the time was likely to have uncovered the scam.

If NatWest asked Mr W about the payments at the time, which I consider it quite likely it would have done to some extent, he would probably have explained he had already discussed the investment with it previously. I think NatWest would likely have had records of those prior interactions and would have been able to see the company was an established payee.

Furthermore, Mr W has told us that, by the end of the scam, S threatened him not to alert “outside agencies” to the full situation, or else he wouldn’t recover any of the money he had invested. Which strengthens my view Mr W would not have divulged more than he had done previously, which we know didn’t uncover the scam.

In those circumstances, I’m not convinced questioning about the payments I’m considering was likely to have uncovered the scam. So, even if NatWest didn’t do enough, I’m not persuaded it would be fair to hold it liable for Mr W’s loss – as it is not clear enough that NatWest ought to have prevented this.

I am mindful of Mr W’s circumstances at the time of the scam, which are well known to both parties. And so I have considered whether NatWest met its duty of care to him. Overall, I’m not persuaded NatWest ought to have done more, in response to Mr W’s circumstances, that would have prevented his loss.

NatWest says it wasn’t aware of any health issues for which Mr W required further support at the time of the scam. And the medical records he has provided don’t demonstrate he had symptoms at that time which ought to have been obvious to the bank. So I can’t see it ought to have known to provide him with further support in relation to these payments.

It appears NatWest tried to attempt recovery when Mr W reported the scam but didn’t receive anything back. Unfortunately, that is common in scams like this; the funds tend to be moved on quickly to avoid detection. I’ve not seen anything persuasive to show NatWest missed an opportunity to recover the fraudulent loss.

I appreciate this will be disappointing for Mr W. It is clear to me that, while in difficult circumstances, he was preyed upon by the scammers – who used sophisticated techniques to persuade him to part with his funds. But my role is to decide whether it’s fair to hold NatWest, as his bank, liable for his loss. For the reasons I have explained, I’m not persuaded it is. Nor do I think NatWest needs to take other action to resolve this complaint.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 28 November 2023.

Rachel Loughlin  
**Ombudsman**