

The complaint

Mr H complains that National Westminster Bank Plc (“NatWest”) didn’t do enough to protect him from losing money to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything here. In brief summary, from April 2018 to February 2021 Mr H made numerous payments from his NatWest account for what he thought was a legitimate investment with a third party I’ll call N. The payments totalled £97,420.60. Some of the payments were made by bank transfer, and some were made by debit card.

Mr H later got in touch with NatWest in 2022 to report that he’d been scammed and he’d lost his money. NatWest didn’t reimburse Mr H his lost funds. Mr H was unhappy and referred his complaint about NatWest to us, the Financial Ombudsman Service. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a 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.

I’ve decided to not uphold this complaint about NatWest, for materially and, in essence, the same reasons as our Investigator.

I’m really sorry Mr H lost this money. He has my heartfelt sympathy. But this doesn’t automatically entitle him to a refund from NatWest.

Banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers’ best interests. But these are predicated on there having been a fraud or scam. So, my first consideration must be whether N was operating a scam as Mr H alleges.

Was N operating a scam?

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Bearing this in mind, in this case I’m not persuaded that at the relevant time N was operating a scam. I say this because:

- The International Organization of Securities Commissions (“IOSCO”) is an

international body that brings together the world's securities regulators. I've found no adverse information about N recorded on IOSCO's Investor Alerts Portal. Whilst this isn't *automatically* conclusive in its own right, bearing in mind the duration for which N appears to have been operating, and the length of time that has since passed, it would, in my view, be very surprising (and unlikely) that N wouldn't have at least some warning recorded about it in the public domain, if it was indeed operating a scam as Mr H alleges.

- I've taken on board Mr H's submissions, including what he's said about (1) N having initially cold-called him; (2) that he's corresponded with other people online who've been scammed by N and have had similar experiences; and (3) that, he says, his experience with N followed the same pattern as other investment scams. However, customers can lose a lot of money with high-risk investments. This can lead to a sense of being scammed, particularly if some questionable practices are involved. However, this doesn't mean N was operating a scam, bearing in mind what I've already said about this. Like our Investigator, my own research hasn't resulted in any compelling information to show N was acting fraudulently. And what Mr H has said about him being initially cold-called, and the pattern of his dealings with N, doesn't persuade me, in the absence of other sufficiently persuasive evidence, that there is enough here for me to reasonably conclude N was most likely operating a scam.
- Overall, I'm not persuaded the weight of evidence is tipped in Mr H's favour. I give strong weight to the fact there are no regulator warnings about N being a scam; and that I haven't found anything else online in the public domain to persuade me N was operating a scam.

In these circumstances, whilst I understand Mr H will be really disappointed, I'm not persuaded there is sufficient evidence to support that N was operating a scam at the time he made his payments.

Prevention

Although banks have obligations to be alert to fraud and scams, there is no obligation to protect against bad bargains or to provide investment advice. So, as I'm not sufficiently persuaded N was operating a scam, I can't reasonably say NatWest had obligations to intervene in the payments before they were sent. This means I can't reasonably uphold this complaint on the basis that NatWest failed to prevent Mr H's payments.

However, for the sake of completeness, even though, because of what I've said above, I couldn't reasonably uphold the complaint on this basis, I've nonetheless (like I say, for the sake of completeness only) thought about what I think most likely would have happened if N was operating a scam, and if NatWest had intervened before the payments were sent. *If* this had been the situation:

- I'm satisfied Mr H authorised the relevant payments. NatWest would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mr H is presumed liable for the loss in the first instance, in circumstances where he authorised the payments. That said, as a matter of good industry practice NatWest should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect a bank to stop and check every payment instruction. There's a balance to be struck between

identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.

- Some of Mr H's payments were such that I'd reasonably expected NatWest to have paused them, pending enquiries with Mr H; and to have then spoken to him to ask him who the payments were for, what they were for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. I think if this had happened, Mr H would have explained his payments were for an investment with N and the general context and the manner of his dealings with them so far.
- *If N was operating a scam (which as I've said, I'm not sufficiently persuaded of), I don't think NatWest could reasonably have known this. I think it could only reasonably have been expected to warn Mr H about the risk of fraud and scams and the importance of undertaking adequate research and checks before making an investment like this. However, I'm not satisfied this or any further research by Mr H would have uncovered anything that contradicted what he already thought he knew about N. Neither did NatWest have any obligation to provide Mr H with investment advice or to protect him from a bad bargain. So, bearing in mind it appears Mr H had already only seen information that reassured him of N's legitimacy, and that I've not seen anything that leads me to think there was anything in the public domain that would have contradicted this or changed Mr H's opinion on this, I'm not persuaded it's most likely that any reasonable level of intervention from NatWest would have prevented Mr H from proceeding with the payments anyway.*

So even if N was operating a scam (which as I've already said, I'm not sufficiently persuaded on, but for the sake of completeness), I still don't think I could fairly say NatWest unreasonably missed an opportunity to prevent the payments before they were sent (nor therefore Mr H's loss).

Recovery

In terms of recovery of the payments *after* they were sent, I understand that when Mr H reported to NatWest in 2022 that he'd been scammed, NatWest got in touch with the beneficiary banks Mr H's bank transfers were sent to, but unfortunately it was unable to recover the funds for Mr H through no fault of its own. With scams, it seems to be a common occurrence that the beneficiary account is drained of the funds promptly on receipt, presumably to limit chances of any potential recovery. So if N had been operating a scam (which I'll say again, I'm not persuaded on), I don't think it would be unfair to say in a case like this where Mr H didn't report to NatWest that he'd been scammed until quite some time after the payments, it would therefore tend to be unusual for the funds to remain in the beneficiary account by then. So I don't think it's NatWest's fault Mr H was unable to recover these funds.

With regards to recovery of the debit card payments, the only potential avenue for recovery of these would have been through the chargeback scheme. Chargeback is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. There's no 'right' to a chargeback, but I generally consider it to be good practice that a chargeback be raised if there is a reasonable chance of it succeeding. However, NatWest is bound by the card scheme provider's chargeback rules, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. And I agree with our Investigator that chargeback claims are unlikely to have succeeded here. Some of the payments would probably have fallen down on time limits (being raised too late), but in any event Mr H's card payments weren't made to N directly but instead to what appears to be money transfer service, which

appears to have provided the services intended. So I can't reasonably say chargeback claims would likely have been successful. So again, I don't think it was NatWest's fault Mr H was unable to recover these funds.

I realise this means Mr H is out of pocket, and I'm really sorry he's lost this money. However, for the reasons I've explained, I don't think this is NatWest's fault. I can't reasonably tell NatWest to reimburse him in circumstances where I don't think it ought reasonably to have prevented the payments or been able to recover them.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 August 2023.

Neil Bridge
Ombudsman