

Complaint

Mr P is unhappy that Northern Bank Limited trading as Danske Bank didn't do more to protect him when he fell victim to an investment scam. Mr P has brought this complaint with the assistance of a professional representative, but for simplicity's sake I've only referred to him throughout the text of the decision.

Background

In January 2018, Mr P fell victim to an investment scam. He'd been researching potential investment opportunities online and found the website of what he believed to be a legitimate investment firm. He filled in an enquiry form on its website and this resulted in him being contacted by one of its sales team. He was invited to invest his money in a fixed rate bond. The bond would mature after two years and pay Mr P a return of 5.43%. Unfortunately, the company Mr P had established contact with wasn't a genuine firm, but a fraudulent operation. In total, Mr P transferred £30,000 to it.

Before he did so, Mr P carried out some checks to ensure that the company was genuine. He noticed that the company didn't appear on the register of authorised firms maintained by the Financial Conduct Authority (FCA) nor did it appear on the register at Companies House. He queried this and was told that the company was incorporated in Switzerland.

Mr P found the formal documentation used to support the scam to be professional in appearance and essentially indistinguishable from genuine bond documentation he'd seen when investing at other times. It also had a professional looking website which helped to persuade him that the company was authentic.

He made his first payment of £12,500 on 13 January 2018 but needed to speak to an employee of the bank before the payment could be processed. After making that first payment, he contacted the business that had issued the bond and checked whether the reference number for that product matched the one on the documentation that had been shared with him. It did and so he was happy to make further payments.

Once he realised that he'd fallen victim to a scam, he notified Danske Bank. It looked into his concerns but declined to reimburse the money he lost. It said that, even if it had done more, it didn't believe there would be any obvious cause for concern. It didn't think it would've had any basis for thinking the investment wasn't legitimate.

Mr P was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it for broadly the same reasons. The Investigator said that Danske Bank had an obligation to be on the lookout for unusual or out of character transactions with the aim of protecting its customers from financial harm due to fraud. The Investigator didn't think that these payments were unusual or out of character. But even if Danske Bank had intervened, he thought it was unlikely it would've been able to prevent the scam.

Essentially, the scam was sufficiently credible that enquiries from the bank wouldn't have brought it to light. Warnings were eventually posted on the websites of more than one

regulator (including the FCA) but these came after Mr P had made these payments. Even if he'd been encouraged to conduct further research, he wouldn't have found anything that unambiguously showed this to be a scam.

Mr P disagreed with the Investigator's opinion. He said that the bank should've warned him that the absence of the company from Companies House and the FCA register suggested that this was a scam. And although the scammers managed to convince him that this was because they were a Swiss company, staff at the bank would've been able to tell him that this wasn't the case.

Because Mr P disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's common ground here that Mr P authorised the payments in dispute. He was tricked by the fraudsters into making the payments in the belief that he was participating in a genuine investment opportunity. These were authorised payments even though Mr P was the victim of a fraud. And although he didn't intend the money to go to fraudsters, he is presumed liable for the loss in the first instance.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Danske Bank should fairly and reasonably:

- Have been monitoring accounts, and any payments made or received, to counter various risks, including money laundering, countering the financing of terrorism and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk (among other things). This is particularly so given the increase in sophisticated fraud and scams, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make the payment altogether.

I've considered this case carefully and I agree with the Investigator's conclusion that, even if Danske Bank had intervened more extensively than it did, it wouldn't have prevented Mr P from losing out.

It's important to point out that it wouldn't be the role of an employee of the bank to carry out an investigation of their own to rule out the risk of fraud. Instead, where it has been identified that the risk of fraud is elevated, they should ensure that the customer has taken adequate steps to protect themselves or suggest further enquiries that the customer could make.

In this instance, Mr P had carried out some checks to protect himself. Furthermore, his conclusion that this was a legitimate investment was partially informed by his own experience of investing in similar investment products. The rate of return Mr P was expecting to earn on his money wasn't unusually high at the time – in fact, it had been specifically chosen by the fraudsters to match those of a genuine bond that had been issued by a third-

party business. Mr P carried out his own checks on that specific bond and found that the details matched the one on the documentation that had been sent to him.

Mr P believed he was investing with a company outside of the UK, so it wouldn't necessarily have been a concern to him that it wasn't visible on Companies House or the FCA register. I don't think it follows that the bank should've advised him that this meant it was likely he was falling victim to investment fraud. Investing in unregulated products is obviously very high risk, but it doesn't automatically follow that such investments are fraudulent.

Mr P's representatives have suggested that the bank should've checked whether the company was genuinely trading in Switzerland. However, I'm not persuaded that it would be reasonable to expect the employee of the bank to know how to verify that.

There is an equivalent to the Companies House register in Switzerland, but it isn't entirely straightforward to consult since it appears to divide the listing up based on the canton in which the company is registered. The FCA's equivalent organisation in Switzerland does maintain a register of firms it authorises. However, the information there isn't presented in a straightforward way. Lists of authorised persons are available under different categories (examples of which include Asset Management, Portfolio Managers and Trustees, Stock Exchange and Financial Market Infrastructure). Each category then has up to ten documents named based on the source of the authorisation of the specific firm or person. In short, the register is labyrinthine. I wouldn't expect an agent of the bank to know how to reliably interpret it.

Overall, I don't find that any failing on the part of Danske Bank was the cause of Mr P's losses here and so I don't think it needs to reimburse him.

Final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 August 2023.

James Kimmitt
Ombudsman