

The complaint

Mr and Mrs J complain that National Westminster Bank Plc (“NatWest”) has failed to refund £100,000 they say they lost to an investment scam.

They are also unhappy with the way that NatWest investigated their complaint.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision. But in summary, Mr and Mrs J sent £100,000 to a Danish Bank (Københavns Andelskasse Bank). The funds were intended to be used for forex trading with Swisspro Asset Management AG (“Swisspro”). Mr and Mrs J was promised payments from Swisspro, but after what appears to be two payments, they did not receive anything further. Swisspro entered liquidation in 2019. Mr and Mrs J did not receive their £100,000 back.

Mr and Mrs J raised a complaint with NatWest in 2022 as they believe that it should have stopped the payment. They therefore requested that NatWest refund them. NatWest declined to do this.

One of our investigators looked into this matter and they did not think that NatWest had done anything wrong. Mr and Mrs J disagreed and therefore their complaint has been passed to me to issue 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons.

The relevant regulations and industry guidance makes it clear that banks have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that NatWest could have delayed the payment(s) while concerns about the payee were discussed with Mr and Mrs J.

So, I would need to be satisfied that there were concerns that Swisspro was operating a scam when Mr and Mrs J made the payment of £100,000 in their NatWest branch in August 2017 in order to expect NatWest to have done anything further here.

I've consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), as well as the FCA's own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about Swisspro at the time Mr and Mrs J made their payment in August 2017.

At the time Mr and Mrs J made their payment, Swisspro was a legitimate fund management company that was authorised by the Swiss Financial Market Supervisory Authority (FINMA) or at least it appeared that way at the time. I appreciate it later filed for bankruptcy in 2019 and that comments made during this process suggest that it may have been operating as a Ponzi scheme, but that does not mean that NatWest should have been aware that it was operating fraudulently when the payment was made. Rather, NatWest at the time would only have known that Mr and Mrs J's money went to a business that appeared to be operating legitimately in another jurisdiction.

Overall, I'm not persuaded that there was any reason for NatWest to have been aware that Swisspro was fraudulent or operating a scam at the time of the payment. As a result, NatWest's duty to intervene wasn't triggered. Therefore, I don't consider the bank acted unfairly by preventing or failing to intervene in the payment being made.

Mr and Mrs J has further raised concerns that NatWest ought to have done more in terms of anti-money laundering checks due to the money being transferred to a Danish bank that was under investigation. I'd like to reassure Mr and Mrs J that I have considered all the relevant law, regulations and good industry practice when considering this complaint. This includes anti-money laundering regulations, because although non-compliance with these regulations is more a wider matter for the regulator rather than our service, it is still something we consider when looking at whether a business could have prevented a fraud or scam.

Ultimately, I'm not persuaded there was anything suspicious at the time that ought reasonably to have concerned NatWest, or that it had any reason to suspect that Mr and Mrs J was attempting to launder money themselves. I understand the Danish bank may have been under investigation from the Danish authorities at the time. But I wouldn't have expected NatWest to have known this, or to have prevented a payment being made to the bank as a result, given it was going to a seemingly legitimate company. So, I don't consider there to be any basis in which NatWest can fairly or reasonably be held liable for their loss on this basis either.

I've also thought about whether NatWest ought to have done anything to recover the funds after Mr and Mrs J reported their loss. Mr and Mrs J didn't dispute the payment with NatWest until 2022. Given the investment company has since become insolvent, it would be highly unlikely that the bank could have recovered any funds, particularly given it was around four years after the payment had been made. NatWest also wouldn't have been under any obligation to consider refunding the payment under the Contingent Reimbursement Model (CRM) Code either, given the payment was made before the Code came into force (and the code doesn't apply to payments made to overseas banks either).

I note Mr and Mrs J's concerns about the thoroughness of NatWest's investigation during its complaint handling process and their frustration that NatWest refused to accept that Swisspro was operating as a scam. I should explain though DISP 2.3.1 explains that our service can consider a complaint if the business, in this case NatWest, is carrying out a regulated activity. And there are several activities that are deemed to be regulated. But crucially, complaints handling isn't one of those. So, as per the rules set by the regulator, I can't consider how NatWest investigated Mr and Mrs J's complaint.

Ultimately Mr and Mrs J were transferring funds for a regulated investment with no warnings at the time to a bank that appeared, at the time to be legitimate. I accept with the benefit of hindsight Swisspro may not have been operating correctly. But NatWest was not to know this at the time, so I don't think it did anything wrong in allowing the transfer.

I appreciate this will likely come as a disappointment to Mr and Mrs J, and I'm sorry to hear they have lost a significant amount of money. However, in the circumstances, I do not consider it would be fair and reasonable to hold NatWest liable for their loss.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 14 December 2023.

Charlie Newton
Ombudsman