

The complaint

Mr R complains that National Westminster Bank Plc (“NatWest”) didn’t do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he’d reported the scam.

What happened

The detailed background to this complaint is well known to both parties. So, I’ll only provide a brief overview of some of the key events here.

Mr R complains that he was the victim of an investment scam that took place over a five-year period. He was contacted by someone claiming to work for a company I’ll refer to as “P” (P changed its name during the scam period, but for ease I’ll refer to it as P throughout), who told him he could make money from investing in wine.

The broker promised attractive long-term returns, that the investment was low risk and that Mr R could make £7,000 within a year from a £5,000 investment. He said the wine would be sold when it was ready, at which point he’d receive his profits.

The broker was friendly and seemed to know what he was talking about, so Mr R decided to go ahead with the investment. Mr R had some money to invest from his retirement fund and between 31 October 2014 and 19 October 2018, he made 11 payments totalling £18,680 using a debit card connected to his NatWest account.

The broker contacted Mr R regularly to say the investment was doing well and within a year he was told that if he invested more money, he’d get a better return. The scam came to light in October 2018, when a family member warned him it might be a scam.

Mr R contacted NatWest, but it said he’d made the payments in 2014 and 2015 and so they were time-barred. It also said that all the payments were made before the introduction of the Contingent Reimbursement Model (“CRM”) code, so the code didn’t apply.

In August 2022, Mr R complained to NatWest with the help of a representative. NatWest apologised that he didn’t think it had done enough to protect him, but it said that due to the passage of time it had no record of what had happened. It noted Mr R recalled it having contacted him about the payments, explaining that in these circumstances its staff would usually ask the customer to confirm they recognised the payments.

Mr R wasn’t satisfied and so he complained to this service arguing that NatWest’s fraud department must have been aware of the media articles about P and should have included it on a warning list. His representative also said P’s bank should have refused to operate its accounts, and that it had failed to provide details about the receiving bank.

The representative argued NatWest had facilitated the fraud by allowing Mr R to transfer the funds over several years and that there were inadequate checks in place. They said Mr R was contacted a couple of times but, because he thought the investment was legitimate, he

confirmed the payments were genuine. They argued the checks should have been much more vigorous, especially as he was over 65, and financially vulnerable.

Mr R's representative explained he's now secluded and his plans to travel have been abandoned because he's lost half his savings and is concerned about the cost of living. Mr R wants a full refund or at least a refund of all payments over £1,000.

I've said I can't consider the first nine payments because they were brought to this service out of time, but I am able to consider the final two, which Mr R made on 17 June 2017 and 19 October 2018 for £5,000 and £100.

My provisional findings

I previously said I wouldn't expect NatWest to attempt recovery of the two payments because they would almost certainly have been withdrawn from the beneficiary account. The only means of recovery would have been a Chargeback request under Visa's Chargeback scheme and, again, any such request would have been out of time.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr R says he's fallen victim to, in all but a limited number of circumstances. NatWest had said the CRM code didn't apply in this case because the disputed payments took place before the code came into force, and I was satisfied that's fair and applies to both payments.

I was satisfied Mr R 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, under the Regulations, and under the terms and conditions of his bank he is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated 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, while 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). I carefully considered the circumstances along with the evidence Mr R and his representative have submitted in support of their position that P was operating a scam. But I said I didn't intend to make a finding on whether P was operating a scam because, even if it was, it doesn't make a difference to the outcome of this complaint.

To uphold this complaint, I explained I need to be satisfied that NatWest could have done more to prevent Mr R's loss. Investing in wine is a legitimate activity, however, NatWest did have an obligation to be alert to fraud and scams and so I would need to consider whether it ought to have intervened to warn Mr R when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect NatWest to intervene with a view to protecting Mr R from financial harm due to fraud.

I considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr R normally ran his account and I thought they were. By the time Mr R made the £5,000 payment, P was operating under a new name, so the payment was to a new payee. And I looked at Mr R's bank statements and the amount was unusual when compared to the other spending on the account. So, I thought NatWest should have intervened when Mr R made this payment.

However, had NatWest warned Mr R about the risk of fraud and given advice on additional checks he could make, I wasn't satisfied this would have made a difference to his decision to go ahead with the payments.

Mr R submitted articles dated in 2016 claiming P's sales methods and practices were questionable, but this didn't amount to evidence that it was a fraudulent scheme I said the articles fall short of concluding P was a scam. Further, this was a registered company and there was no requirement for it to be regulated by the Financial Conduct Authority ("FCA"). So, even if NatWest had warned Mr R about the risk of fraud and advised him to undertake some more research, Mr R believed the investments was genuine and I didn't think there was an information available in the public domain at that time which would reasonably have stopped him from going ahead with the investment.

Developments

NatWest has accepted my provisional findings. Further comments have been made on Mr R's behalf.

Mr R recalls Natwest contacting him to ask whether the payments were genuine, but there were no other enquiries and he maintains that more stringent questioning would have revealed the possibility that he might be the victim of a scam, and this should have been rigorously communicated to him. The representative has argued Mr R was financially vulnerable and had no mobile phone or access to the internet, and NatWest should have protected him by monitoring newspaper reports and fraud trends and asking more questions around the investment.

The representative maintains that P was operating a scam and that this is supported by articles associating P with fraudulent schemes.

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 considered the points raised on Mr R's behalf but I'm afraid I maintain my view that even if NatWest had done more to warn Mr R about the risk of fraud and either advised him to undertake some more research or even done it for him, I'm not satisfied there was any information or evidence available in the public domain at the time he made the final two payments which would reasonably have stopped him from going ahead with the investment in circumstances where he believed the investments were genuine. Consequently, I don't think NatWest could have done anything to prevent Mr R's loss, so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, 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 R to accept or reject my decision before 6 October 2023.

Carolyn Bonnell
Ombudsman