

The complaint

Ms F and Mr H complain that National Westminster Bank Plc (NatWest) wouldn't refund money they lost in a scam.

What happened

What Ms F and Mr H say:

Ms F and Mr H had a joint current account with NatWest. In 2016, they were introduced to an investment scheme by someone they knew, who was said to have been an investor for four years and had made good returns. Ms F and Mr H did some due diligence and found nothing untoward about the scheme - for example, there wasn't anything on the Financial Conduct Authority (FCA) register. The owner of the business and his son were ex-policemen. So, Ms F and Mr H went ahead and invested £45,000 – paid from their joint account with NatWest – as follows:

Date	Transaction	Amount
11 April 2016	Faster Online Payment	£5,000
26 April 2016	Faster Online Payment	£10,000
11 July 2016	Faster Online Payment	£10,000
29 July 2016	Faster Online Payment	£10,000
23 December 2016	Faster Online Payment	£10,000
Total loss		£45,000

The investment scheme proved to be a Ponzi type fraud which came to light in 2019. It was reported that 5,000 people had lost £70 million. The company was wound up by order of the court, and a liquidator was appointed in 2019.

Ms F and Mr H lost all their savings. They contacted NatWest in July 2022.

They said that NatWest should've done more to protect them and asked why they were making the large payments. If the bank had questioned them, they said they would likely have been alerted to the fraudulent scheme and not made the payments. They also said NatWest didn't properly investigate what had happened and were slow to deal with their complaint.

What NatWest said:

Ms F and Mr H complained to NatWest in July 2022. NatWest said the payments were made

before the introduction of the Contingent Reimbursement Model Code (CRM Code), and therefore couldn't be considered within that guidance. They looked at the claim on a 'best endeavours' basis and contacted the receiving bank, but no funds remained to be paid back.

NatWest said they did stop certain customer transactions but couldn't say what the formula was that identifies such a payment - as this was confidential.

NatWest apologised for not dealing with Ms F and Mr H's complaint as quickly as they should have and for that, paid compensation of £200.

Our investigation so far:

Ms F and Mr H brought their complaint to us. Our investigator didn't uphold it. He said NatWest should've stopped the payments and questioned Ms F and Mr H about them. But even if they had, he was persuaded that they would've gone ahead anyway – as they'd been introduced to the scheme by a colleague who had already made money and had been investing for some time. Ms F and Mr H had also found nothing negative about the scheme when they did their research. And because the owners of the scheme were ex – policemen, that would also have also given Ms F and Mr H some comfort.

NatWest had tried to get the money back, but no funds remained with the receiving bank.

Ms F and Mr H didn't agree and asked that an ombudsman look at their complaint – and so it has come to me to make a final 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'm sorry to hear that Ms F and Mr H have lost money in a cruel scam. It's not in question that they authorised and consented to the payments in this case. So although Ms F and Mr H didn't intend for the money to go to a scammer, they are presumed to be liable for the loss in the first instance.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. In April 2016, there were some circumstances where a bank should have taken additional steps before processing a payment to help protect customers from the possibility of financial harm. For example, there were some guidelines which should have been followed when older or vulnerable customers asked to make unusually large cash withdrawals or where someone appeared to be telling them what to do.

In recent years, there has been an increase in sophisticated fraud and scams, leading to greater expectations of banks in terms of its role in preventing fraud. This started with a super complaint in September 2016. For example, the British Standards Institute's 'Protecting Customers from financial harm as a result of fraud or financial abuse – Code of Practice' was published in October 2017. This recognised that banks should look to identify and help prevent transactions – particularly unusual or out of character transactions - that could involve fraud or be the result of a scam.

It was later – that the expectations of banks were increased: with the Banking Protocol in 2018; and the Financial Conduct Authority's Banking Conduct of Business Sourcebook S 5.1.10A (R) (since 13 January 2018) & 5.1.10B (G) (since 19 December 2018).

And the Contingent Reimbursement Model (CRM) Code, effective from 28 May 2019, was set up to provide protection for customers who fall victim to Authorised Push Payment (APP) scams, and also to reduce the occurrence of APP fraud.

In other words – the obligations of banks to protect customers from fraud when these payments were made (between April 2016 and December 2016) were far less than later.

Bearing all of this in mind, I need to decide whether NatWest acted fairly and reasonably in its dealings with Ms F and Mr H when they requested the payments - based on the expectations of banks in 2016.

Having done so, I'm not persuaded NatWest should refund Ms F and Mr H the amount they lost.

I looked at how the joint account operated. I can see there were some previous large payments leading up to the scam. For example:

- November 2015 - £2,000 payment
- December 2015 - £7,500; £2,000 payments
- January 2016 - £2,000; £6,407 payments
- February 2016 - £2,000 payment
- March 2016 - £2,000 payment

Bearing in mind the guidance under which NatWest were operating to at the time – I don't think it's reasonable that the payments relating to the scam were flagged as needing more examination by NatWest.

And also - there's a balance to be struck: NatWest had obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think NatWest acted reasonably in processing the payments.

Our investigator said that even if NatWest had flagged the payments and questioned Ms F and Mr H about them, they would've gone ahead anyway. I accept that they dispute that, and I make no comment about whether they would have gone ahead or not – as my decision is based on the fact that I don't think it's reasonable to expect NatWest to have questioned the payments in any case, for the reasons I've described.

Recovery:

We expect firms to attempt to recover funds from recipient banks when a scam takes place. I looked at whether NatWest took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost funds. NatWest have said they contacted the recent bank and no funds remained to be paid back – and given the passage of time, and the fact that a liquidator was appointed in 2019, I'm not surprised at that.

I'm sorry Ms F and Mr H have had to contact us in these circumstances. I accept they've been the victim of a cruel scam, but I can't reasonably hold NatWest responsible for their loss here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F and Mr H to

accept or reject my decision before 28 September 2023.

Martin Lord
Ombudsman