

The complaint

Mr C complains that National Westminster Bank Plc won't refund money he says he lost to a scam.

In making this complaint Mr C is represented by a third-party, but for the ease of reading I'll refer to Mr C throughout this decision.

What happened

The circumstances of this complaint are well known to both parties, so I won't repeat everything in detail. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

In July 2018 Mr C made sent a payment of £25,050 via a payment service provider for the purpose of investing £25,000 in an unregulated property scheme (that I'll call W). Mr C received two interest payments from the investment but after this the payments stopped, so Mr C thought he had been a victim of a scam.

Mr C complained to NatWest in November 2022. He argued that NatWest had breached its duty of care by failing to question the payment and, had it done so, he wouldn't have gone ahead, and the loss would have been prevented.

NatWest said Mr C authorised the payment and therefore there were no concerns at the time about the validity of the payment. And it didn't agree to refund the money Mr C had lost.

Mr C didn't accept this outcome and referred the matter to our service. But our Investigator didn't uphold the complaint. While she didn't think the payment stood out as being particularly unusual or concerning - when compared to Mr C's normal account usage, she found – on balance, that the payment had been made in branch. So, she thought NatWest had missed an opportunity to intervene with the payment and provide Mr C will a scam warning. But she added that – even if NatWest had intervened, she didn't think this would have prevented Mr C from making the payment based on the information available about W at the time.

Mr C disagreed. He said that NatWest should have intervened when he instructed the payment as all high value payments should be flagged irrespective of the general account usage. And especially as the payment here was to a new payee. Mr C maintained that had NatWest intervened it would have been able to identify several concerning aspects of the investment.

As no agreement could be reached, the case was passed to me for a final decision.
Your text here

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.

The starting position in law is that Mr C is responsible for transactions he makes himself. There's no dispute here that Mr C authorised the transaction.

However, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, NatWest should, fairly and reasonably, have been on the lookout for out of character and unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud.

It would clearly be an onerous requirement for NatWest to question every payment and I consider it to be appropriate for a customer's previous account activity, among other factors, to be taken into account when deciding whether a payment does, or does not, present heightened risk.

Mr C's account statements show a number of high value payments in the year leading to the payment in dispute (although, I accept that these payments appear to go to another account in Mr C's name). But the payment in dispute didn't reduce the balance of his account significantly (when compared to other payments made from the account) and didn't form part of a concerning pattern of payments – both of which might be indicators of fraud.

That said, like the investigator, I'm persuaded Mr C made this payment in branch. And given this was a large payment I think it would have been good practice for NatWest to have discussed the reasons for the payment with Mr C. There is no suggestion that this happened.

But, even if NatWest had asked Mr C about the payment, it's difficult to see how any intervention would have prevented his loss. After all, it doesn't appear that any significant concerns were raised about W until sometime after the payment was made and it entered liquidation. Based on what appears to have been known at the time, I can't reasonably conclude that NatWest would have recognised the risk that Mr C would lose his money and I don't think there was sufficient information in the public domain for NatWest to be particularly concerned about W.

I note Mr C has mentioned a discrepancy in the recipient details. I take this to mean that the entry on Mr C's statements doesn't refer to W. But it seems in this case that W used a payment service provider to process the transaction. As the payment service provider used is a legitimate and regulated Electronic Money Institution, I don't find that NatWest should have considered this to be unusual or concerning.

Mr C suggests that W or intermediaries acting on its behalf played down the risk elements of the investment. And that NatWest should have highlighted the risks of investing in products that aren't regulated. I think, in these circumstances, that's an unrealistic expectation of the kind of warning NatWest ought to have given in what would have been a short interaction with Mr C in branch - especially as NatWest wasn't providing investment advice. And, set against the weight of evidence at the time that W was operating legitimately would, in any case, be unlikely to have deterred Mr C from going ahead.

Finally, I've thought about whether NatWest had the opportunity to recover the funds for Mr C. But I think it's unlikely any attempts to recover the money would have been successful given the time that has elapsed since the payment was made and when the complaint was raised with NatWest – particularly, as W went into liquidation in the interim period. So, I'm not persuaded that NatWest did anything wrong when it didn't attempt to recover the funds.

I'm sorry that Mr C has lost out, but I've decided that NatWest isn't responsible for his loss.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 November 2023.

Sandra Greene
Ombudsman