

The complaint

Mr C complains that National Westminster Bank Plc (“NatWest”) won’t refund over £250,000 he says he lost to an investment scam.

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I’ll focus on giving the reasons for my 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 and have decided not to uphold it for the following reasons:

- The relevant regulations and industry guidance makes it clear that banks ought reasonably to protect consumers from the risk of financial harm, including fraud and scams. But the expectation 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 payments while concerns about the payee were discussed with Mr C.
- So, I would need to be satisfied that the investment company (“F”) was likely operating a scam at the time the disputed payments were made between March and April 2020 in order to expect NatWest to have done anything further here. When determining this, I’ve borne in mind that certain high-risk investment traders (such as CFD merchants like F) may use sales methods, or communication styles that can be seen to be unfair. Especially, when considering the financial losses incurred because of a disappointing return on an investment that’s been promoted. Even so, not all complaints to us involving CFD merchants are in fact a scam. While the ways and means of these businesses can be viewed as unreasonable or even unethical – that doesn’t necessarily mean they amount to the high legal threshold or burden of proof for fraud.
- 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 F at the time he made the disputed payments.
- The company Mr C invested with was registered in Cyprus and had been authorised since 13 January 2015 as an investment firm with CySEC (the financial regulator in Cyprus). The FCA has also confirmed that, as of 11 May 2016, F had permission to conduct cross-border services to the UK under MiFID for investment services involving financial CFDs. This was the case up until the regulator issued its first supervisory notice on 28 May 2020, where it then prohibited F from conducting any further regulated activities within the United Kingdom from June onwards. However, this was not published until *after* Mr C had already invested his money with F. And the supervisory

notice also does not state that the investment company was operating a scam at the relevant time. The FCA criticised F's business practices, but didn't say it was *fraudulent*.

- So, overall I'm not persuaded that F can be said to have been fraudulent or operating a scam at the time Mr C made his payments. As a result, NatWest's expectation to intervene wasn't triggered. There was the inevitable risk of Mr C's investments returning a loss based on market performance. But NatWest isn't required to protect its consumers from the risk of financial loss due to investment advice or bad bargains. Therefore, I don't consider NatWest acted unfairly by failing to intervene in these payments
- Even if I were to accept that F was operating a scam at the time Mr C made the payments, and that NatWest should have intervened, there would have been very little to suggest that the investment firm was operating a scam, given it was regulated at the relevant time. So, any warning from NatWest to carry out further research on the investment firm's legitimacy would have been unlikely to yield any results that would have made Mr C think he was being scammed, so I don't think an intervention would have ultimately prevented the payments from being made in any event.
- I note that Mr C disputed the payments with NatWest outside of the 120-day timeframe allowed for a chargeback claim to be pursued, so NatWest wouldn't have been able to pursue such a claim (which, in any event, would've had very little prospects of succeeding even if it was in time, given the debit card payments were related to an investment).

I appreciate this will likely come as a disappointment to Mr C, and I'm sorry to hear about the money he has lost. However, I'm not persuaded NatWest has acted unfairly here.

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 Mr C to accept or reject my decision before 20 June 2024.

Jack Ferris
Ombudsman