

The complaint

Mr and Mrs B complain that National Westminster Bank Plc (NatWest) won't refund the money they lost when they sent a payment to an investment they now believe to have been a scam.

The complaint has been brought via a representative. For ease, I'll mainly refer to Mr and Mrs B, even where comments or submissions have been made on their behalf by the representative.

What happened

In June 2018, Mr and Mrs B made a payment from their NatWest account for £50,000, plus fees, for an investment. They believed this money was for an overseas property development company, who I'll refer to as 'G'. The investment was essentially a fixed duration loan to G, and was to provide Mr and Mrs B with a fixed rate of return of 10% per annum, plus a 2% bonus at the end of the term. And G would be required to repay the capital at maturity – in 2023.

However, G seemingly didn't make any interest payments or capital returns to any investors from around mid-2019. G later failed and entered a liquidation process, which is still ongoing.

Mr and Mrs B now believe G wasn't operating legitimately. They believe the investment was essentially a 'Ponzi' scheme – whereby returns were being fraudulently paid out of money received from other investors, and not from profits earned through the property development work.

Mr and Mrs B complained to NatWest in July 2023. They felt that documentation available prior to the payment would call into question how investors were seeing returns, as only 55% of sums invested were funding the purported investment, with the remaining 45% being used to pay investment brokers and repay existing investors their guaranteed returns. Mr and Mrs B felt that appropriate enquiries would have stopped them from investing. So, in summary, they believe they've been the victim of a scam and would like NatWest to reimburse their losses – they're unhappy that NatWest didn't sufficiently intervene with the payment.

NatWest didn't uphold the complaint. In essence, it believes this was a legitimate investment at the time but that it simply failed. It also said it tried to recover the funds but that none remained.

But Mr and Mrs B disagreed. So, they brought the complaint to our Service.

Our investigator considered this complaint. They said there hasn't been a formal finding on whether G was operating a scam or not. But they ultimately concluded that if NatWest had asked further questions about the payments, it wouldn't have resulted in a different outcome – there was nothing that would have appeared overly concerning about the investment at the time. And there would have been nothing to suggest Mr and Mrs B were at risk of financial harm. So they don't think it would be fair or reasonable to hold NatWest liable for Mr and Mrs

B's losses.

Mr and Mrs B disagreed so the complaint has been passed to me to decide.

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.

While I've considered Mr and Mrs B's submissions fully, I'll only address what I consider to be the key points.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

The Contingent Reimbursement Model ("CRM") came into effect after this payment was made, so isn't relevant here. And it's also not been determined that G was actually operating a scam. But, I've thought carefully about what would have been expected of NatWest at the time and, regardless of whether this was or wasn't a scam, with the facts before me in this case, I don't uphold this complaint. I'll explain why.

In broad terms, the starting position is that NatWest would have been expected to process payments that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account. It's not been disputed that Mr and Mrs B authorised the payment so, in the first instance, they're presumed liable for the payment.

However, I've thought carefully about whether NatWest ought to have had grounds to suspect the payment might be connected to fraud or a scam and whether it should therefore have intervened before processing the payment. While this was a substantial sum, this wouldn't have stood out as unusually high or uncharacteristic based on payments made in the months just prior.

But, that being said, the payment was made in branch and evidence provided by NatWest shows it did intervene and ask questions about it. From this, it appears there were some very specific questions asked such as whether anyone had approached or cold-called Mr and Mrs B telling them they needed work done to their property. The most relevant question was around whether they were making the payment as a result of a request for funds from someone they hadn't actually met who would pressurise them into transferring funds for an investment opportunity. And Mr and Mrs B seemingly indicated this wasn't the case.

Looking at the intervention here, I'm not convinced it went far enough, though I recognise there would likely have been a conversation surrounding the written document that would have gone beyond what I've been presented with. However, I'm not persuaded that a further *proportionate* intervention would have made a difference to Mr and Mrs B's decision to make the payment, and this part is crucial – I'd need to be persuaded that had NatWest sufficiently intervened, the subsequent loss would have been avoided.

NatWest wasn't required to determine the suitability of the third-party investment product. Nor was it required to conduct any research on G. I have to think about what it could reasonably have established in the course of proportionate enquiries to Mr and Mrs B – and without the benefit of hindsight.

Having listened to a phone call between NatWest and Mr B, following the complaint being made, he said that he'd been told it was a really good investment, with three people "in the financial business" saying they'd invested and seen returns. So, he proceeded with the advice given by financial advisers and made the payment. And this tells me that Mr and Mrs B had confidence in the investment.

Looking at the information available at the time, I note the returns were said to be 10% (fixed) per annum with a 2% bonus. This was a long-term investment and so wouldn't have sounded unrealistically high or too good to be true.

Based on what we know of the structure of the investment, it wasn't so concerning or unusual that it could have been identified as a Ponzi scheme or scam. I also note there wasn't anything available in the public domain that would have suggested the investment wasn't legitimate. And though G wasn't FCA regulated, I don't think this would have been particularly concerning given that this was an overseas investment opportunity.

So, even if NatWest had asked Mr and Mrs B about any research they'd conducted, or encouraged them to do so before investing, I can't see that there's anything they would have identified which would have deterred them from investing at the time. And, with appropriate enquiries, they would also have found that Mr and Mrs B had taken the advice of a financial adviser, so were being supported by professionals in their investment choices.

All of this tells me that Mr and Mrs B weren't under any pressure to invest but had done so of their own volition, being given confidence to do so by the advice and experiences of those they trusted. I don't think it would have been apparent in June 2018 that G might be fraudulent as opposed to being a higher risk investment. On this basis, I don't think NatWest could have uncovered information, especially through proportionate enquiry in response to a payment – that would have led to significant doubts about the legitimacy of G at that point in time. And, with that in mind, nor do I think Mr and Mrs B could have uncovered such information at the time either.

On this basis, I can't see how any reasonable intervention from NatWest would have made a difference to Mr and Mrs B's decision to invest. And I therefore don't think it would be reasonable to hold NatWest liable for Mr and Mrs B's losses.

NatWest weren't able to recover the funds. But they weren't made aware of the loss until 2023 – as Mr B himself said he wasn't aware of the loss until then. But G had already entered the process of liquidation by this time. So, while it's unclear exactly when NatWest tried to recover these, there would have been no reasonable prospect of success even if NatWest had acted more quickly upon notification of an issue.

So, having considered everything, while I'm sorry that Mr and Mrs B have lost such a substantial sum of money, I don't uphold this complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 1 October 2024.

Melanie Roberts
Ombudsman