

The complaint

Mr C complains that National Westminster Bank Plc (NatWest) – as the recipient bank, didn't do enough to prevent his loss.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here. Mr C says he fell victim to a scam in July 2019. He transferred £10,000 from his bank account with 'S' to a third-party account held with NatWest. The payment was for an investment bond with a company I'll refer to as 'N'. Mr C was introduced to the investment opportunity by a broker – 'A', who's status on the Financial Conduct Authority (FCA) register at the time was an "Appointed Representative" (AR) of an FCA-authorized firm. This allowed A to carry out certain regulated activities as an agent of another firm, known as the 'principal firm'. Mr C made the payment to 'R', who was a fund custodian that held cash and assets on behalf of its clients. In 2019 (after the payment was made) A was deregistered as an AR, and R entered administration. In 2021 N also entered administration. Mr C believes he's been the victim of authorised push payment (APP) fraud. He asked both S and NatWest to refund his loss. NatWest did not agree to a refund.

In short, Mr C said NatWest, as the recipient bank, should under the rule changes that were introduced by the FCA in January 2019, refund his loss as it could've done more to prevent it. The matter was referred to our service. Our Investigator explained the relationship under which we could consider Mr C's complaint, that being DISP 2.7.6R(2B), isn't retrospective, it only applies in relation to a complaint concerning an act or omission which occurred on or after 31 January 2019. She said as the recipient account was opened before that date, the opening of the account and account activity before 31 January 2019 would fall outside the scope of our jurisdiction. And for what she could consider, she didn't recommend the complaint should be upheld.

Mr C disagrees and has asked for an Ombudsman to review his complaint.

As I've already issued a jurisdiction decision setting out the extent of the issues I can consider, I can now issue my decision on the aspects of Mr C's complaint I do have the power to investigate.

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'm not upholding this complaint. I appreciate the outcome will be disappointing for Mr C, and I'm genuinely sorry to hear about his loss, but I can't fairly and reasonably ask NatWest to refund this. I'll explain why.

Firstly, the regulatory changes that the FCA made in January 2019 that Mr C references, were to extend the Financial Ombudsman Service's jurisdiction. They did not place a requirement/responsibility on a bank/payment service provider (PSP) involved in the transfer of funds to automatically refund victims of alleged APP fraud. These changes were brought about to provide victims of alleged APP fraud (where eligible) access to dispute resolution through the Financial Ombudsman Service for complaints against banks/PSPs who receive payments relating to the alleged fraud.

I've taken on board Mr C's comments about how the events unfolded, including the actions of the broker involved and the information about N which has since come to light. But to be clear my role here is limited to deciding whether, in the circumstances of this complaint, it would be fair and reasonable to ask NatWest to refund Mr C's loss. I note Mr C has made detailed submissions in support of why he believes he's been the victim of a scam. But here, I don't think I need to make a finding about this point to reach what I think is a fair and reasonable outcome.

I say this because even if I were to accept Mr C has fallen victim to a scam. For me to fairly uphold this complaint, I'd need to be persuaded that there was a failure that took place between 31 January 2019 and the point at which Mr C's funds were paid away and but for that failure, Mr C's loss would have been prevented (or more of his funds could've been recovered). It isn't enough just for there to have been a failure, I'd need to be able to conclude that the failure fairly and reasonably caused the loss. Likewise, if the Lending Standards Boards Contingent Reimbursement Model Code (the CRM Code) was applicable, I'd still need to conclude that NatWest didn't meet the standards required of it as a 'receiving firm' under the CRM Code and its act or omission (within the context of what falls within my jurisdiction) had a material effect on preventing Mr C's loss.

Ultimately, I've not seen anything that persuades me that there has been a failing by NatWest in the monitoring of its customer's account (on or after 31 January 2019) nor the steps it took when Mr C notified it of the alleged APP fraud, where it can fairly be concluded, that its actions, or failure to act were reasonably the cause of Mr C's loss. I say this for the following reasons:

- From what NatWest has shared, the recipient account was established (for several years) and operating without any concerns prior to the arrival of Mr C's funds.
- I can't fairly say NatWest did anything wrong when crediting Mr C's payments to the recipient account or in allowing the funds they represented to be paid away without taking any further action. I say this because against the backdrop of how the account was being operated; its general pattern of use; and the prior account activity. The arrival and paying away of Mr C's funds wasn't in any way unusual or suspicious.
- From what I can see S has not sent notification of alleged APP fraud to NatWest. It wasn't until 2023 (several years after the payment was made) that Mr C informed NatWest that he believed the payment he'd sent to one of its customer's accounts was made as a result of an alleged scam. I'm satisfied NatWest's response that it couldn't return any funds to Mr C was appropriate. And at that point there wasn't much more that NatWest could reasonably have done to assist in the recovery of Mr C's funds from the recipient account.

So in summary, there isn't a fair and reasonable basis upon which I can ask NatWest to do more 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 C to accept or reject my decision before 9 April 2024.

Sonal Matharu
Ombudsman