Ombudsman Decision
CIFO Reference Number: 20-000017
Complainant: [The complainant]
Respondent: The Royal Bank of Scotland International Limited, trading as NatWest International

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this decision made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.[1]

A decision shall constitute an Ombudsman Determination under our law.

Complaint

[The complainant] complains, in summary, that The Royal Bank of Scotland International Limited, trading as NatWest International, failed to identify that he was the target of an investment fraud. [The complainant] holds the bank accountable for not having exercised greater care in scrutinising the information he provided to it about his proposed investment strategy, together with the payee details for the five payments he made. Had it done so [the complainant] considers that the fraud would have been uncovered such that he would not have made the payments he did.

Background and Provisional Decision

I previously set out the background to this complaint in my Provisional Decision dated 14 December 2020 – a copy of which is attached, and forms part of my Final Decision.

The outline background is that, in mid-2019, [the complainant] was approached by people who we now know were fraudsters impersonating [redacted for anonymisation purposes] – operating as a 'clone' of that firm. The fraudsters recommended an 'investment' strategy to [the complainant] and, between July and September 2019, [the complainant] made five 'investment' payments totaling £1,004,580.62 to beneficiaries [overseas].

[The complainant] subsequently came to suspect that he had been the victim of a fraud. [The complainant] contacted the bank in November 2019 but, by then, it was too late to retrieve any of the money from the beneficiary bank accounts. [The complainant] asked NatWest to reimburse him for the payments he had made but it declined to do so.

[1] Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

By way of my Provisional Decision I concluded, in summary, that:

- NatWest was under a regulatory obligation to act with due regard for the interests of its customers, to have in place appropriate training for its employees, and to have procedures in place to manage the risk of external fraud and other financial crime. The bank should, therefore – either itself, or through the [redacted for anonymisation purposes] branch in the UK, given the extent of that office's dealings with [the complainant] – have identified the potential risk of fraud in respect of the beneficiaries of the payments [the complainant] was asking the bank to make and drawn this to his attention. However, even if NatWest had done so, I considered it more likely – on the balance of probabilities – that [the complainant] would still have made his payments.

- I did not accept that NatWest was under an obligation to have identified the 'clone firm' risk such that it should have drawn it to [the complainant's] attention before he made his payments. I considered that this goes beyond what I would reasonably have expected the bank to have known about/done in these circumstances.

Subsequent Submissions

NatWest accepted my Provisional Decision. It agreed that [the complainant] would have made the payments in any event, and it added that whilst it stood by its earlier responses it did not "*think it necessary to elaborate on these.*"

[The complainant] did not accept my Provisional Decision. He asked me to review my provisional conclusions (as is provided for under our procedures), and to issue a formal determination on his complaint. In re-emphasising many of the points [the complainant] had previously made he set out, in summary, the following principal observations:

- It was wrong of NatWest to suggest that [the complainant] is "*experienced in financial business.*" [The complainant] is not, and it is unfair of the bank to try to characterise him in this way. Instead, [the complainant's] "*career and work have been purely in science and technical affairs (technical regulatory affairs related to the efficacy and safety of products, nothing to do with business finance).*" Moreover, he did not take up his role as [redacted for anonymisation purposes] for his company until a year after he made his payments, where the job is all about the "*technical requirements/regulations of medicines and nutritional products, it has absolutely nothing to do with finance or finance regulation.*" [The complainant] does not see why his "*professional scientific role should enable NatWest to have a lesser duty of care towards* [him] *than other customers.*"

- [The complainant] initially transferred his money to NatWest in Jersey following his relocation from [overseas] to the UK, where he intended to buy a house – with the

remainder of the money to be his retirement reserve. But, in part because of Brexit, [the complainant] decided to find a "*non-property investment to place the money in over the medium term*", which was his entire 'patrimony/net worth'. The payments [the complainant] made to '[the fraudulently cloned firm]' were the only payments he made from the Jersey account to other jurisdictions, and the 'due diligence' he did before deciding to 'invest' and make the payments was to visit the genuine [investment firm's] website (which was included in the fraudsters' emails). "*It was a verification, done by someone who is not an investment specialist, who was living in a very new country and who was completely unaware of these types of frauds.*" Whilst the country he comes from "*has many issues, some of them serious … this very specific type of fraud is not common there.*"

- [The complainant] believed banks had known about the type of fraud he fell victim to for many years before it happened to him, and staff in other banks were already giving 'scam' warnings to their customers. NatWest now provides these warnings to its customers so "*why not before when* [his] *payments were being made…? NatWest was clearly very late in implementing protective measures and clearly failed in* [his] *case.*" The bank failed to "*put in place the appropriate procedures to manage the risk of external fraud and other financial harm, being therefore negligent on these aspects.*"

- My provisional decision "*focused too much on the cloning risk and ignored all the other red flags that this was a scam. There were many other more significant red flags in the documentation … including i) the account holding names not having a connection with [the genuine investment firm]; ii) multiple and different account names; iii) accounts [overseas], but [genuine investment firm] letterhead of London address; iv) accounts in different banks ([redacted for anonymisation purposes]) and not [the genuine investment firm's bank]; v) very substantial amounts in every single payment, emptying all* [his NatWest] *account at the end.*"

- [The complainant] strongly disagrees with the suggestion that, if NatWest had warned him about the possibility of fraud, [the complainant] would nevertheless have still "*proceeded with the payment*[s]. *There is no evidence or probability that this would have happened* – [he is] *adamant that* [he] *would never have gone ahead with any of the payments if* [he] *had received a scam/fraud warning from any of the NatWest entities.*" There is "*absolutely no chance*" of this, and it is "*speculative and unfair to assume that* [he] *would have gone back to the same fraudsters if NatWest had raised any alert indicating risk.*" Instead, [the complainant] would have asked questions, discussed what he should do with NatWest, and he would have followed the bank's advice – because he always does so, and because of his personality type (as illustrated by the results of a psychometric test he undertook in January 2021). In view of the "*clear and irrefutable evidence that NatWest failed to give the correct advice … for a life-changing decision of this nature, shouldn't* [he] *be given the benefit of the doubt? …* [He] *find*[s] *the provisional decision very unfair and unbalanced.*"

[The complainant] then asked to discuss his complaint with me by way of a Zoom meeting. He subsequently provided some additional information and documentation, saying (in summary):

- [The complainant] first asked the bank for information about its savings accounts in October 2018, and he followed this up in June 2019. However, [the complainant] felt that the interest rates the bank was offering were low, especially in comparison with those he had been used to [overseas]. [The complainant's] subsequent discussions with '[the fraudulently cloned firm]' led him to 'invest' "*415k in a 5 Year Compounding High Yield Bond, because it was extremely safe*" as set out in the brochure the fraudsters had provided to him. This bond was advertised as paying an annual return of 14.01%, equivalent to an annualised average return over the five-year period of over 70%. The fraudsters then offered a similar 5-year bond "*but in US dollars (even better currency at that time, considering Brexit temporary volatility). …* [He] *decided to invest £390k*" in that USD bond which meant that, in total, he had "*80% of* [his] *patrimony in 2 extremely safe investments with returns guaranteed and no risk of losing the capital.*" Some while later [the complainant] 'invested' £100,000 each into a 'Managed Trading Account' and a 'Gold Fund', bringing the total to just over £1 million. [The complainant] added that he could monitor everything through "[his] '*[genuine investment firm]' 'portal', which was actually very sophisticated and* [he and his] *wife could see daily the updated balance of the investments.*"

- [The complainant's] initial discussions with his NatWest relationship manager were not just about savings rates but also about currency movements and the political and economic environment affecting his decision. After [the complainant] was approached by '[the fraudulent investment firm]' he told his relationship manager, more than once, of "*the '[fraudulent investment firm's]' investment opportunities, in deep detail, the specific interest rates* [they] *were paying …* [but his] *relationship manager simply responded that* [the bank] *did not have these rates of return and did not have anything similar or else to offer.*" [The complainant's] relationship manager should have identified the possibility of fraud from these conversations; [the complainant's] failure to do so – including subsequently, when he received "*all documentation and emails from '[the fraudulent investment firm]'* … [but] *did not perceive … the multiple red flags*" amounted to a "*breach of duty of care*" by NatWest. [The complainant's] relationship manager even specifically wrote to him to confirm that a payment had been made to [the fraudulent investment firm], so giving him comfort that everything was genuine.

- [The complainant] was nervous about making the investment payments, which is why he followed his relationship manager's instructions about how to do so, including his recommendation to visit a UK branch. This is a further illustration of

how he always followed the bank's advice. [The complainant] would similarly have done so if NatWest had given him any suggestion of the possibility of fraud.

In light of what [the complainant] had said about his various, and apparently detailed, discussions with his NatWest relationship manager prior to making his payments to '[the fraudulently cloned firm]' I asked the bank for its further observations. It responded, first of all, by repeating (and expanding on) its earlier submissions about the limitations on the role of an international personal banker, and it also provided several call recordings between him and [the complainant]. NatWest did not accept that "*even a banker with detailed and sophisticated market and investment knowledge (which … is not required or expected of an international personal banker) would have identified from any of the calls that [the complainant] was about to be a victim of fraud.*" Indeed, the only references to [the fraudulently cloned firm] in any of the calls it had located were about the process and practicalities of making the payments. The bank added that, during the call that took place on 26 June 2019, the relationship manager correctly and properly suggested that [the complainant] should consider taking independent financial advice in view of his "*uncertainty about existing and future currency markets and his need to plan*", and that he should undertake his own research to find someone suitable.

I shared these call recordings with [the complainant]. In response, he noted that his first contact with the fraudsters had been on 27 June 2019 (i.e., *after* the call recordings I had shared with him) and he suggested an approximate range of dates when the material calls with the bank took place. [The complainant] added that the calls he had been provided with revealed, in particular, his hesitation and "*very significant doubts … [that he was] almost paralyzed … in the context of the NatWest investments*" which he had been discussing with his relationship manager. So I asked NatWest to provide recordings of all calls between the bank and [the complainant] (to and from both his personal and office numbers) up to and including the date of the third of his five payments – by which time the significant majority of his money had been transferred. However, none of those calls revealed the type of discussion which [the complainant] had previously indicated they would. There had indeed been calls about practical payment issues – where, for example, [the complainant] noted that he was "*completely 'obeying' all of* [his relationship manager's] *advice … for the first payment*", including going personally to the [redacted for anonymisation purposes], UK branch, together with sending a supporting email to the bank to say that it was 'imperative' the first payment be made on 11 July 2019 otherwise he would lose the 'investment' opportunity. There was also a discussion with another member of the bank's staff about the return of one payment which was subsequently re-sent, but that is all. [The complainant] suggested that the pressure to make the first payment on time was a further 'red flag' that his relationship manager had missed.

On 28 February 2021 [the complainant] provided me with a further detailed submission in response to my Provisional Decision together with a number of separate attachments.

By way of these documents he either repeated, re-emphasised, or expanded on points he had already made. To the extent that he provided fresh or refocused information [the complainant] said, in summary:

- From the outset, his NatWest relationship manager provided advice, suggestions, and opinions of his own – "*such as 'pound will rally', 'if I were you, I would stay in pounds', and other phrases, which clearly establishes some level of advice, despite the 'regulatory statements' he declared.*" By June 2019, and despite nine months having elapsed since he had first asked about savings accounts, he had not taken any action – illustrating that his "*level of hesitation and anxiety should have led* [his relationship manager] *to take an even greater level of care.*"

- [The complainant] was happy to accept the suggestion of seeking independent financial advice but he had no knowledge of IFAs – saying they do not exist in his home country. The bank should therefore have recommended he go to specific websites rather than simply search on google. The police officers who investigated the fraud considered it most likely that it was his google searches (and the inputting of his personal data on several websites) which led to the fraudsters contacting him the following day, impersonating [the investment firm]. In other words, his action in following the advice he had received from the bank "*proved extremely disastrous*" because it most probably led directly to the fraud.

- [The complainant's] relationship manager should have been put on alert when he started – with some haste – to transfer all his capital from NatWest to just one new provider, not least "*from a business development point of view*" but also because of their prior discussions about currency risks and investment compensation limits. Indeed, he was never asked whether he had found a financial adviser or how he was introduced to '[the fraudulently cloned firm]'. Whilst he considers there was a "*clear breach of procedure*" by all three NatWest entities – [redacted for anonymisation purposes], UK branch, the Isle of Man payment processing centre, and his relationship manager in Jersey – it is the latter which was most important given the "*close and trusted relationship*" which had by then been established between them.

[The complainant] then focused on the phone discussions he had with at least one other member of the bank's staff about the payment of £214,580.62 which was returned by the beneficiary bank – apparently because of an input error in respect of the beneficiary's name/details and/or 'compliance reasons'. [The complainant] said this was a significant further 'red flag' the bank missed, and he also suggested that perhaps his discussions with his relationship manager about his proposed investments had actually occurred after mid-August 2019 – i.e., after most of the money had been transferred but before he made his final two payments of £100,000 each. [The complainant] also referred to a call he believed he had had with the bank lasting 76 seconds which was not on the bank's call list, suggesting that "*76 seconds is more than*

enough for a material conversation to have happened and for a well trained person to question something, raise an alert and the Bank to give [him] *the fraud/scam advice that would have changed completely the course of actions.*" But "*even if he did not have such specific dialogue with* [his relationship manager his] ***points are still very valid.***" ([the complainant's] emphasis.) I nevertheless invited him, if he wished, to provide his own call log of possible later calls with his relationship manager. [The complainant] subsequently added that he did not "*make one single 'invest £1 million' decision before the first payment*" but rather it was "*made in pieces and made or renewed before every single payment, as different opportunities from the fraudsters were presented*". He did not, however, submit any further call logs.

I then drew both parties' attention to a recent development in the UK which has some relevance to my consideration of [the complainant's] complaint. In January of this year the UK High Court issued its summary judgment in the case of *Philipp -v- Barclays Bank Plc [2021] EWHC 10 (Comm)*. Whilst this judgment is not, in my view, necessarily directive of the conclusions I should reach in [the complainant's] complaint (not least because of the different legal framework and a bank's regulatory obligations in the Channel Islands) I raised it because I consider that, in coming to my decision in this complaint, I should have regard to it even though I am not bound to follow this judgment of an English court.

In response, I received several detailed sets of submissions from [the complainant] about why (in summary) he did not consider that the facts and circumstances of his complaint aligned with the analysis and outcome of the *Philipp* case – which he also noted might be appealed. [The complainant] added that he did not believe it is "*fair that* [he] *is not allowed to benefit from the* [UK] *APP Code*" which provides for banks in the UK to reimburse their customers in certain circumstances if they have been the victim of fraud. [The complainant] invited me to "*take an act of fairness and kindness* [and to uphold his complaint] *considering it is extremely unfair and unbalanced for the bank to take* [him] *out of the APP Code because the payments were made overseas.*" Here, [the complainant] is referring to the UK Contingent Reimbursement Model (CRM) Code which was introduced in the UK in May 2019. This provides for customers who have been the subject of Authorised Push Payment (APP) frauds to be reimbursed in certain circumstances by their bank.

NatWest replied in more general terms, initially highlighting some matters where its records differ from [the complainant's] statements:

- In light of the significant research it has done, including cross-checking with [the local telecommunications firm], it does not consider that the "*very detailed conversations with* [the relationship manager] *about the specifics of the '[fraudulently cloned firm's] products'*" which [the complainant] has suggested took place did in fact occur. The relationship manager "*acted properly and in the best interests of [the*

complainant] when he strongly recommended he use an Independent Financial Advisor ([the genuine investment firm] would not meet the criteria of an IFA). … Bank staff are not permitted to make recommendations."

- Whilst it "*has no bearing on the severity of the fraud, and in no way minimis*[es] *the loss* [[the complainant]] *has suffered*" the bank noted that he had previously said he had wealth [overseas] of about £3 million. In other words, the "*sums subsequently moved, whilst substantial, were not unexpected given the information provided and the 'pre-fraud' conversations.*"

The bank then made a couple of 'in principle' observations on my earlier findings, saying – first of all – that I appeared to have suggested that the broad level of service and protection available to customers of the bank in the UK and in Jersey should be the same. However, whilst the bank does "*strive to act in the very best interest of its customers … wherever those customers are based … the laws and regulations in each of its jurisdictions are not the same, which leads to numerous examples where the protections and rights are very different.*" It cannot therefore "*be right that the Bank is required to offer the same protection and practices as the UK.*" Furthermore, "*the use of a UK branch cannot give UK rights to a customer whose contractual arrangements are in a different jurisdiction.*"

NatWest then made several further observations (which I paraphrase slightly):

1. "*While* [it] *acknowledge*[s] *that additional fraud questions had (at the time of the payments) been recently introduced to the UK processes as part of* [the] *adoption and membership of* [the APP Code, it does] *not accept they were standard banking practice.* [NatWest in Jersey] *at this time had undertaken other widespread anti-fraud education, including websites, social media and other avenues, both to fulfil its regulatory requirements but also as part of the Bank's wider desire to prevent fraud. …* [It does] *not agree that* [NatWest in Jersey] *had an obligation to ask questions that related to or were part of a scheme to which* [it] *could not belong.*"

2. It agrees that "*it is not realistic to expect staff in branch or payment roles to have sufficient knowledge of complex products and financial fraud to recognise that a payment to a well known brand, such as [the genuine investment firm], is in fact to a clone or fraudulent account. It would not be in within the realms of the knowledge or responsibility of a banking relationship manager … either.*"

3. It agrees that "*even if questions had been directed at [the complainant], he would still have made the payment*[s]. *… [The complainant] did not discuss the terms or details of the proposed investment with* [his relationship manager], *despite the previous conversations regarding Bank offerings.*"

4. "*The recent case of Philipp -v- Barclays demonstrates the requirement that a bank does undertake its customer's instructions, and restates the Quincecare limitations.*" It is "*confident that in this case no liability can attach to the bank in respect of the losses [the complainant] has sadly suffered.*"

I asked [the complainant] about the apparent discrepancy concerning the extent of his wealth. [The complainant] explained that, when he gave the bank a figure that was greater than £1 million for his 'entire patrimony' he had used the wrong currency exchange rate and had not taken account of tax liabilities and the mortgage and other loans that needed to be repaid [overseas]. [The complainant] restated that the amount he had lost by way of the transfers to '[the fraudulently cloned firm]' did indeed amount to his total wealth at that time.

[The complainant] then raised a matter which he had previously identified prior to my issuing my Provisional Decision which was a case study published on CIFO's website relating to the complaint of 'Miss R'. He considered that the circumstances of that case were very similar to his own, and he wanted to understand why (in contrast to my Provisional Decision on his complaint) the outcome had been in favour of Miss R. [The complainant] suggested that, as in the case of Miss R, there were "*very significant indications of fraud … which should have led multiple NatWest employees or at least one of them, to have perceived and brought something to* [his] *attention. …* **[NatWest's]** ***failure in having the right procedures to avoid fraud is causative of 100% of*** **[his]** ***losses.***" ([the complainant's] emphasis.) In response, I outlined what I considered to be the key differences between his complaint and that of Miss R, along with noting that a relatively short 'case study' report cannot reflect all the detail and nuances of the underlying complaint.

At [the complainant's] request I then held another Zoom meeting with him on 29 March 2021 – in response to his request for the "*opportunity of a short verbal explanation*" of his complaint. [The complainant] followed that up with "*one very final note, to summarise the key points* [he had] *tried to explain over the call the other day*" in which he said, in summary:

- I correctly concluded in my Provisional Decision that "*NatWest was in breach*" so it would be unreasonable and unbalanced not to uphold his claim – especially in light of the outcome of Miss R's case, which he maintains is very similar to his own. "***CIFO needs to apply fairness and consistency between the cases it reviews***." ([the complainant's] emphasis.)

- The 'clone risk' "*was never meant to be the central point of* [his] *submission.*" Instead, the bank should have "*been alert to* [the] *multiple red flag signs present in the documentation which were very … indicative of fraud.*" It is not acceptable that the

bank did not have systems, procedures, and training in place to alert him to these risks.

- [The complainant's] relationship manager was irresponsible and negligent in not questioning anything after his 'google' search suggestion, and not identifying any of the red flags – the most significant of which was when the c£214k payment was returned after "*it was not accepted by the [overseas] bank due to compliance reasons."*

- The assumption that he would have gone ahead with his payments "*even in the presence of a warning/alert from NatWest, even in general terms, is too much of an assumption, too much of a guess/speculation.*" [The complainant] was so hesitant – as illustrated in the call recordings when he was previously discussing savings options with the bank – and he remains adamant that he would not have proceeded with the payments and that the fraud would then have been quickly discovered. As the victim "*who's life has been devastated*", if "*CIFO is to be fair in* [his] *case"* he should be given "*the benefit of the doubt … following the breach from NatWest … as it is not possible to definitively conclude what exactly would have happened.*"

- [The complainant] did not recognise that he was the victim of a fraud until it was too late; everything was new to him and he "*was completely unfamiliar with everything.*" But if he had received a warning from the bank he would not have gone back to the fraudsters. However, if I still believed he would have done so a discount on the refund would be "*understandable … and consistent with* [my] *logic. … Denying completely 100% … of the claim … appears incredibly unfair and unbalanced and unreasonable.*"

Findings

I have considered (and, where I had previously received it, re-considered) the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint. Where necessary and/or appropriate, I reach my conclusions on the balance of probabilities; that is, what I consider is (or would have been) most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

In setting out the background to this complaint and the parties' submissions in response to my Provisional Decision I have, as previously, condensed everything (in particular, the very considerable further representations [the complainant] has made) – distilling the main points so that I may focus my findings and conclusions on what I consider to be the central and material issues. I take this approach because of the framework under which CIFO operates, having been established to consider complaints about financial services providers in the Channel Islands as an informal alternative to the civil courts.

So, although this decision is lengthy, my findings and conclusions are set out in less detail than the submissions I have received. However, for the avoidance of any doubt, I confirm that I have read and considered everything which has been provided to me.

The impact of a loss of around £1 million is almost unimaginable; at the very least it must be a severely distressing – and I have no doubt potentially life-changing – event for [the complainant] and his family to be facing. I believe NatWest acknowledges the considerable distress arising from his payments having been sent to what we now know were fraudulently-opened accounts, rather than for genuine [investment firm's] investments. My understanding is there is no dispute that [the complainant] remains out-of-pocket to the full extent of the five payments he made.

[The complainant's] opening contention is that he does not see why his senior "*professional scientific role should enable NatWest to have a lesser duty of care towards* [him] *than other customers.*" As a matter of principle, I agree with him. But this does not offset the corresponding duty on him to have made reasonable enquiries before deciding to invest, and to have remained appropriately alert during the period when the payments were being made. It's evident from my conversations with [the complainant] that he understands and accepts his own responsibilities in this regard. So, in assessing this complaint I need to balance the bank's duties and obligations with those of [the complainant] in order to reach a fair and reasonable overall conclusion.

As I set out in my Provisional Decision, I believe there are three key issues I need to consider and decide in order to determine this complaint:

1. should NatWest have identified one or more of the five payments as potentially fraudulent before [the complainant] made them, recommending he check to make sure he was making genuine investments?; and/or

2. should NatWest have identified and raised with [the complainant] the possibility that he might not be dealing with the genuine [investment firm], recommending that he check to make sure there was no underlying fraud?; such that

3. flowing from either (1) and/or (2), [the complainant] would have taken some action which would have resulted in the payments not being made.

But before I do so, I consider it appropriate to address some matters of general principle which the bank raised in its most recent submissions.

NatWest said that I had suggested in my Provisional Decision that the broad level of service and protection available to customers of the bank in the UK and in Jersey should be the same, and it challenged that contention. But that is not quite what I said. In noting that the laws and regulations are different in the two jurisdictions it is

nevertheless the case – for the reasons I set out – that UK branches and Jersey branches operate under broadly comparable, albeit different, regulatory obligations. So, when the service being offered is the same – for example, as here, the making of international payments – I consider it is both fair and reasonable to say that the bank in Jersey should provide (albeit subject to schemes or systems which are not available to the bank in Jersey, such as Confirmation of Payee) an equivalent standard of service to that which a UK customer would receive from a UK branch. Indeed, as I also set out, it's clear from our conversations with Channel Island regulators that they expect that too. Moreover, and as it relates to the specific circumstances of [the complainant's] complaint, I cannot see how – in making his payments through a UK branch – it could be said to be fair for that UK branch to have provided a lesser, or somehow less complete, level of service to him as a Jersey customer than it would have done to one of its own customers. Not only would that be counter-intuitive but it would arguably be discriminatory and/or prejudicial – requiring the UK branch to identify that the customer's account was held offshore and then take a different, and somehow less rigorous, approach to receiving and processing the payment instructions.

Furthermore, I consider that if – in order to comply with its regulatory or other obligations – a UK branch should reasonably ask questions of its UK customers when receiving and processing a payment instruction it should ask the same questions of a customer with an offshore account – so providing potential benefit and protection to that customer and, by extension, to the account-holding branch. That is entirely separate from the limitations on the scope of protection provided by the UK CRM Code – which, because the payments [the complainant] made were to overseas beneficiaries, would not have been of assistance to him even if his account had been held at a UK branch. Instead, in my view what needs to be recognised is the common overall aim of the regulatory environments in both jurisdictions, which is for banks to take reasonable steps to prevent financial crime by, amongst other things, seeking to identify and – as a result – prevent fraud whenever they reasonably can. I add here, for the sake of completeness, that – despite his invitation for me to "*take an act of fairness and kindness*" – I cannot treat [the complainant's] payments as though they were covered by the UK Code, firstly because that Code does not apply to transactions made from Jersey accounts and secondly because, even in the UK, it does not cover overseas payments such as his.

I now turn to addressing the key issues I believe I need to consider and decide in order to determine this complaint, starting with:

Should NatWest have identified one or more of the five payments as potentially fraudulent before [the complainant] made them, recommending that he check to make sure he was making genuine investments?

[The complainant] made the following payments from his NatWest International account in Jersey:[redacted for anonymisation purposes]

The first two payments represented [the complainant's] 'investment' in the sterling '5 Year Compounding High Yield Bond', with the third being [the complainant's] 'investment' in its USD equivalent. The two payments of £100,000 were 'invested' in a 'Managed Trading Account' and a 'Gold Fund'.

There is no doubt that these were high-value and unusual payments for [the complainant] to make. They were not, however, necessarily unexpected – at least to the extent that his relationship manager knew he had around £1 million which he was looking to invest, that he found the bank's savings rates to be disappointing, and he was likely to be looking elsewhere to invest. But neither the [redacted for anonymisation purposes], UK branch nor the Isle of Man payments processing centre knew any of that; all they were presented with were five large payment instructions between mid-July and late September 2019. So, whilst they were aware that [the complainant's] relationship manager in Jersey had some knowledge of the payments, the first question is this – should one or other (or maybe both) of those offices have raised any questions with him about the payments he was making? A bank's primary duty is to act on its customers' instructions. In doing so it should act with reasonable skill and care – that is, and in the context of making a payment, to do so without delay and to get the details right (for example, by inputting the details correctly into the relevant payments system). A bank's primary duty is however modified – both by regulation and, in the UK, by law – such that it should refrain from enacting a customer's instruction if it is reasonably put on notice that the underlying payment may be an attempt to misappropriate the customer's money. The common law position in the UK includes the decision in *Barclays Bank -v- Quincecare Ltd [1992] 4 All ER 363* (giving rise to what is often referred to as the '*Quincecare duty*'). I believe it is helpful to set out what the UK judge said at p376, because it assists – as a matter of general principle and practice – to frame the nature and extent of a bank's reasonable actions:

"*The law should not impose too burdensome an obligation on bankers, which hampers the effective transacting of banking business unnecessarily. On the other hand, the law should guard against the facilitation of fraud, and exact a reasonable standard of care in order to combat fraud and to protect bank customers and innocent third parties. To hold that a bank is only liable when it has displayed a lack of probity would be much too restrictive an approach. On the other hand, to impose liability whenever speculation might suggest dishonesty would impose wholly impractical standards on bankers. In my judgment the sensible compromise, which strikes a fair balance between competing considerations, is simply to say that a banker must refrain from executing an order if and for so long as the banker is "put on inquiry" in the sense that he has reasonable grounds (although not necessarily proof) for believing that the order is an attempt to misappropriate funds of the company (see proposition (3) in Lipkin Gorman v Karpnale Ltd (1986) [1992] 4 All ER 331*

at 349. [1987] 1 WLR 987 at 1006). And the external standard of the likely perception of the ordinary prudent banker is the governing one."

As I say, I recognise that this is a decision of an English court and is therefore not directly applicable to the actions of the bank in Jersey. However, following discussions with his Jersey relationship manager, [the complainant] initiated his payments by visiting and providing his signed instructions to the [redacted for anonymisation purposes], UK branch of NatWest, where – in my view – that branch was acting as agent for NatWest in Jersey. Moreover, by the time he did so, the CRM Code had been introduced in the UK – following a lengthy development period which involved NatWest in the UK, amongst others. I am therefore satisfied that, by then, staff at the [redacted for anonymisation purposes], UK should have been aware of the relevant indicators of potential fraud and were under both a regulatory and a legal duty to refrain from enacting [the complainant's] payments if reasonably put on notice that those instructions may have represented an attempt to misappropriate his money.

It is however the case that the perceived extent of that UK legal obligation has recently been curtailed as a result of the UK High Court decision in *Philipp -v- Barclays Bank Plc [2021] EWHC 10 (Comm)*. As [the complainant] has noted, this decision may be appealed – so it cannot currently be regarded as settled UK law. But the effect of the judgment, insofar as it is relevant to [the complainant's] circumstances, is that the judge said at p180 that he was not persuaded that the Quincecare duty "*extends beyond the situation of attempted misappropriation of the customer's funds by an agent of the customer*" (my emphasis) such that it does not, as a result, extend to individuals. [The complainant] gave the payment instructions to the bank himself – unlike in *Quincecare*, where the cheque payment was signed by the chairman of the company acting in his capacity as its agent.

So, and in summary, when accepting and validating a payment instruction a bank's duties to its customer extend, albeit only where relevant and appropriate, beyond just making sure it has been properly authorised by the customer. Having given the matter very careful consideration I remain satisfied that there were some indicators from the documents [the complainant] presented to the [redacted for anonymisation purposes], UK branch – which I find should have been evident to them by the time he made his payments in mid-2019 – that even though it was clear that [the complainant] was authorising the payment instructions himself they could represent an attempt to misappropriate his money. For example, they were for large and – for most people – unusual sums and, beyond the first payment, the beneficiaries (all of which were [overseas]) were not presented as [the genuine investment firm] entities. Identifying such indicators and engaging with [the complainant] about them – to check whether he was satisfied that the beneficiary details he had been provided with were correct and not potentially fraudulent – would not, in my view, have imposed 'too burdensome an obligation' on the [redacted for anonymisation purposes] branch staff.

However, the issue which flows from this is what the staff of the [redacted for anonymisation purposes], UK branch might have been expected to say to [the complainant] had they identified any of these indicators. Here, I believe it is important to note that the first payment was made to what was expressed as a [genuine investment firm] beneficiary – [redacted for anonymisation purposes]. So, on the face of it at least (albeit subject to the 'clone firm' point, which I will address later in this Final Decision), I do not see a reasonable basis for concluding that the [redacted for anonymisation purposes], UK branch should have been alerted to the possibility that that payment was being made to a fraudulent beneficiary. [The genuine investment firm] is a well-known global financial services firm which, amongst other things, provides investment and wealth management services internationally to high-net-worth individuals. So, if the [redacted for anonymisation purposes], UK branch staff had been prompted to make enquiries of [the complainant], in my view those enquiries would have been limited to asking if he was sure he was sending his money to the correct beneficiary account, and with the correct account details.

I further consider that the same analysis applies for both the Isle of Man processing centre and [the complainant's] Jersey relationship manager notwithstanding the different legal and regulatory framework which applied to them. I say this for largely the same reasons. All 'investment' confirmations were professionally presented as ostensibly genuine [investment firm]-headed documents – even though we now know they were not. They contained full payment instructions and, bearing in mind that the first payment was being sent to what was apparently [the genuine investment firm], I do not consider it surprising that the beneficiary bank was [overseas].

However, all later payments ultimately went to a different bank and beneficiary [overseas]. [The complainant] told me during a conversation I had with him in January that his relationship manager's query about whether the second beneficiary, [redacted for anonymisation purposes], was linked to [the genuine investment firm] was resolved by [the complainant] referring the bank to the '[fraudulently cloned investment firm]' documents. So, in other words – and contrary to one aspect of his further submissions – [the complainant's] relationship manager *did* ask about this. I consider this to be an important point, because it demonstrates that the relationship manager was alert to the possible implication of new beneficiary details. But [the complainant] felt able to reassure him that the payments were indeed being correctly made, to beneficiary and bank, as instructed by '[the fraudulently cloned firm]'. So, bringing these points together in respect of the documents [the complainant] presented to NatWest and the consequent payment instructions he provided, whilst I find that NatWest should – either itself or through the [redacted for anonymisation purposes] , UK branch – have identified the potential risks and questioned him more than it did, I also find that even if the bank had done so it is, on balance, more likely rather than less likely that [the complainant] would still have made his payments in reliance on the documents he had received from the fraudsters. I do not consider that the possibility he was dealing with

anything other than the genuine [investment firm] would reasonably have emerged as a result of anything the bank might have queried.

[The complainant] has, however, said there were further 'red flags' which the bank should have identified and which, had it done so, would have caused him to pause and not make his payments. These include, for example, his action in transferring all his money by way of several large payments, and doing so relatively quickly. However, the transfers were made to what were ostensibly investments that would provide a better return than the bank's own savings accounts – which genuine [investment firm's] investments could well have done, and which could also have been time-limited. I do not therefore consider that, of itself, any of this was a 'red flag' in the way [the complainant] has suggested. Furthermore, in my view the relationship manager acted reasonably and appropriately when he recommended that [the complainant] seek independent financial advice; I do not believe it was incumbent on him to go further than he did when making this suggestion. In acknowledging that the UK was a relatively new environment for [the complainant] ([redacted for anonymisation purposes]), I also find that [the complainant] presented as being reasonably and sufficiently financially aware such that I do not consider the relationship manager was under any greater duty or obligation – or, indeed, to expand on what independent financial advice actually is. Whilst I can see it's possible that [the complainant's] internet searches led the fraudsters to find and make contact with him I do not accept that this fairly or reasonably gives rise to any liability on the bank arising from the suggestion he take independent advice.

I also consider it unlikely – on the balance of probabilities – that [the complainant] discussed his proposed '[genuine investment firm] investments' with his Jersey relationship manager on the phone before he decided to follow the 'recommendations' he had received from the fraudsters. Whilst I do not intend to question [the complainant's] recollections from around two years ago, including his strong belief that he did discuss all of this with his relationship manager, the bank does not accept that any such conversations took place and the detailed investigations which have since been undertaken (including my own review of the call recordings) have not supported [the complainant's] position. I also consider it unlikely that a 76-second call (the only call where I am told [the complainant's] phone logs do not match the bank's records) would have been enough for a material conversation to have taken place. Indeed, it's possible that could have been a failed call which did not even connect. And whilst it is the case that, during the course of our further investigations, I suggested to [the complainant] that I considered it unlikely that any conversations after mid-August 2019 – by which time the third payment had been made – would have revealed such a discussion, I did invite [the complainant] to provide his own further call logs if he wished to do so. But he did not – despite what he has more recently said about having made ongoing, and individual, decisions about his '[genuine investment firm's]' investments rather than a single decision at the outset. Whilst I note what [the

complainant] has said about this, in all the circumstances and on balance I am not entirely persuaded that it is likely to fully reflect the earlier and initial conversations and exchanges he had with the fraudsters.

The return of the payment of £214,580.62 (the second in the overall sequence) does, however, merit very careful consideration – because I agree with [the complainant] that an apparent beneficiary account and name mismatch is a clear indicator of potential fraud. Indeed, it is arguably the strongest sign of all that everything was not as it should have been. I also believe that this is where the second issue I need to consider and decide really starts to have a material bearing on the overall outcome – which is:

Should NatWest have identified and raised with [the complainant] the possibility that he might not be dealing with the genuine [investment firm], recommending that he check to make sure there was no underlying fraud?

Neither [the complainant] nor the bank ever appear to have felt that the '[fraudulently cloned]' entity he was dealing with was anything other than the genuine firm. This is unlike the circumstances in some other APP fraud cases I have seen, where the entity simply presented itself as itself (albeit a fraudulent one) – not a clone of a genuine firm. This is why, in order to determine this complaint fairly, I need to give careful consideration to the 'clone' aspect of it. Whilst I note that [the complainant] has more recently said this was "*never meant to be the central point of* [his] *submission*" it was a key aspect of his original complaint – and, in my view, it is arguably more critical to the overall outcome than any of the 'red flags' he has identified.

Focusing back on the return of the second payment, when [the complainant] initially made that payment the account name and beneficiary bank details were the same as for the first payment, which had been successfully made earlier in July. So, to that extent at least, I see no genuine basis for either [the complainant] or the bank to have felt there might have been something sinister going on – there could have been a more benign reason for the payment not 'going through' as normal. Moreover, there was some uncertainty during a phone call [the complainant] had with the bank (not with his relationship manager) on 14 August 2019 about whether the payment had in fact actually been received by the beneficiary and whether the return might have been a 'duplicate'. During that call [the complainant] said he would contact '[the genuine investment firm]' – by which, of course, he unknowingly meant the fraudsters. The payment was then successfully made the following day, albeit with different bank and beneficiary details which [the complainant] no doubt obtained from the fraudsters.

It seems clear from this sequence of events that [the complainant] did not consider there was anything fundamentally amiss when he discussed the returned payment with '[the fraudulently cloned firm]'. [The complainant] was satisfied that the payment he eventually made was to the correct beneficiary and that it represented a payment

towards genuine investments. [The complainant] continued to believe he was dealing with a genuine entity rather than a 'clone' and, importantly, he had also just made his third payment, for £390,000, to that same beneficiary (this being the one which his relationship manager had queried and about which reassurance had been provided to the bank).

Against this overall background I believe it is difficult fairly to conclude that NatWest had a reasonable basis to have thought differently from its customer or that the discussions [the complainant] had with the bank about the return of the second payment and the way in which it was finally and successfully made amounted to enough of a 'trigger' for me to conclude that NatWest acted in breach of duty towards him by not then identifying the underlying fraud. In saying this I do understand the points [the complainant] makes – in particular, the potential importance of the return of a payment for the reason given – and why he particularly asked me to focus on the conversations he had with the bank and the actions it took in relation to it. But, as I say, in my view and after very careful consideration, on balance I do not find that there is enough in what happened for me to determine the point in [the complainant's] favour.

However, if I had come to a different view on whether or not NatWest should reasonably have been alerted to the possibility of fraud from the return of the second payment, or indeed whether the bank should have questioned [the complainant] further before he made any of his payments, would it have made any difference? This is the third of the three issues I set out earlier which I need to consider and decide. [The complainant] is adamant that it would have done, and he has devoted much of his further representations to setting out how risk averse he is and how 'obedient' he is in following instructions generally, including from the bank.

Having carefully considered all that [the complainant] has said about this, along with having 'met' him twice on Zoom, I am prepared to accept how he characterises himself in this respect. But I also remain of the view, for the reasons I set out previously, that – bearing in mind the due diligence he explains he did – even if NatWest had suggested he check the payment details it is more likely rather than less likely that he would still have asked NatWest to go ahead and make them. In my opinion, and on the balance of probabilities, [the complainant] is likely to have been satisfied that the payments were being made to genuine beneficiaries because any further enquiries he might have made would more than likely have been directed towards the fraudsters rather than to the genuine [investment firm]. The fraudsters would, I have little doubt, been persuasive in their reassurance in response to any questions [the complainant] might have raised with them. This conclusion is, in my view, illustrated and supported by his having told NatWest, in response to its enquiry, that '[the beneficiary]' was indeed a correct beneficiary for his '[genuine investment firm's]' payments. [The complainant] did not take that query as a 'trigger' for looking into things more deeply, and – in all the

circumstances – I do not accept it was unfair or incorrect of me to conclude previously that he would most probably just have gone back to the fraudsters.

So that is why, in my view, the key issue upon which this complaint turns is the point about the clone risk. For [the complainant's] claim against the bank to succeed it has, in my opinion, to be shown that NatWest should have identified that he may not have been dealing with the genuine [investment firm] and recommended he search out the genuine firm rather than simply revert to the people he had so far dealt with.

[The complainant] said to me when we last 'met' on Zoom that he accepts it is difficult for a bank to be alert to a specific 'clone risk' about an individual firm. I agree with him. That said, by the time [the complainant] made his payments there were already warnings on the UK financial services regulator (the Financial Conduct Authority)'s website about various [investment] entities being cloned – although the specific warning relating to [the genuine investment firm] did not appear until November 2019.

However, not only did [the complainant] not discover this for himself as part of his own due diligence – for example, by going beyond 'checking the FCA number' – but I share the bank's view that it is beyond the reasonable expectation of front-line branch staff who accept payment instructions to have done so. The same applies to the staff in the Isle of Man processing centre. I consider that it is expecting too much of their staff to be aware of this specific risk (either generally or in the context of [the genuine investment firm]) let alone to bring it to a customer's attention before a requested payment is made.

I also remain of the view that, whilst [the complainant's] relationship manager in Jersey might have had more of an opportunity to know about 'clone firm' risks and the UK regulator's list, I do not consider that it would be right to say he *should* have been so aware – or that, by not being, the bank can fairly be said to have acted negligently or in breach of any duty of care it owed to [the complainant]. Notwithstanding the opinions that the relationship manager expressed and his general comments about, for example, interest rates and currency movements, I consider that [the complainant's] expectation on this specific point takes things too far.

Putting all of this this another way, and in the particular and individual circumstances of this complaint, my conclusion remains that I do not accept that NatWest's not identifying the 'clone firm' risk – either generally, or as a result of any of the 'red flags' [the complainant] has referred to – fairly or reasonably offsets, let alone exceeds, his personal obligation to satisfy himself that he was dealing with a genuine entity. I find that the principal, and overriding, responsibility to do so – and, in consequence, to take steps to minimise or negate his losses – rested with [the complainant].

There are, however, two further – and final – matters I need to address.

Firstly, [the complainant] has compared his circumstances with those of 'Miss R' as set out in a case study on CIFO's website. [The complainant] considers that her circumstances were very similar to his own, so he wanted to understand why my provisional conclusions on his complaint reflected a very different outcome from the refund which Miss R received. [The complainant] added that CIFO should "*apply fairness and consistency between the cases it reviews.*"

Although Miss R's complaint was also about an APP fraud, what happened was very different in certain key respects from the circumstances of [the complainant's] complaint. Unlike him, Miss R was dealing with a genuine investment broker. Their email account was hacked, leading to Miss R receiving – from a fraudster – an 'eleventh hour' change in the account details for the payment she was about to make. Her bank knew about that change because Miss R told them about it, but they didn't react by, for example, recommending she check with her broker to make sure the new instructions were genuine. Had Miss R done so, the fraud would have quickly come to light. The combination of a fraudster intercepting the emails of a genuine firm and then providing new account details at the 'eleventh hour' is one of the most common hallmarks of APP frauds, but – importantly – there was no 'clone firm' in Miss R's case and no other entity she might have contacted. Unlike [the complainant], she did not know the fraudsters and had no direct dealings with them other than by receiving the updated account details by email. So, if Miss R had been alerted to the risk of fraud she could only have contacted her genuine broker when it would undoubtedly have come to light. I have explained earlier in this Final Decision why, in my view, even if NatWest had identified the indicators of potential fraud in respect of [the complainant's] payments and engaged with him about them it is unlikely the fraud would have been uncovered. [The complainant] is right to say that CIFO should consider and determine complainants fairly and consistently. I am satisfied that both his and Miss R's complaints were considered with that at the forefront of our minds.

My second point concerns the monetary limit on the awards CIFO can make – £150,000. This is barely 15% of [the complainant's] claimed loss. Whilst we can recommend that financial services providers pay more than that we have no power to require them to do so. I raised this point with [the complainant] at the outset of my investigation, on the basis that – for a claim of just over £1 million – he might instead prefer to take out legal proceedings against the bank. I do understand that these can be costly but, equally, even if I were to have upheld his complaint I would not have been able to award compensation of anything approaching the total amount of the payments he made. [The complainant] nevertheless asked me to proceed, and he now has my assessment and determination of his complaint. If he does not accept the outcome of CIFO's consideration of it his legal rights will not have been affected and – should he wish to do so – he will be entitled to take out legal proceedings in order to try to recoup his losses.

Final Decision

I am very much aware that there is a substantial amount at stake here, and that what I have set out above will come as a profound disappointment to [the complainant]. I doubt that anyone could feel anything other than acute sympathy for him, given that he has lost so much money to fraudsters in the way that he has.

When I last spoke with [the complainant] he said to me that he accepts he should bear some responsibility for his losses and that he had doubts during the 'investment' process, not least because everything was very new to him. [The complainant] said he tried to check things as best he could, and he found it strange that his '[genuine investment firm]' account balance was not updating as it should have done. He therefore felt that because both parties could have prevented his losses it would not be fair for the bank to "*wash their hands*" of what happened.

However, for the reasons I have explained, I do not accept that that is the correct approach. In all the circumstances, and after very detailed and careful consideration of all the evidence, I do not consider that it would be fair or reasonable for me to impose a liability on the bank for the fraud perpetrated upon [the complainant]. My Final Decision, therefore, is that I do not uphold this complaint.

Next steps for [the complainant]

[The complainant] must confirm whether he accepts this Decision either by email to ombudsman@ci-fo.org or by letter to the Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands, JE4 9QG, **within 30 days of the date of this Decision** – that is, by 6 June 2021. The Decision will become binding on [the complainant] and NatWest if it is accepted by this date.

However, if there are any particular – and exceptional – circumstances which prevent [the complainant] from confirming his acceptance before the deadline, he should contact me with details. I may be able to take these into account, after inviting views from NatWest, and in these circumstances the Decision may become binding after the deadline. I will advise both parties of the status of the Decision once the deadline has passed.

Please note there is no appeal against a binding Decision, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding Decision.

If we do not receive an email or letter by the deadline, the Decision is not binding. At this point [the complainant] would be free to pursue his legal rights through other means.

David Millington
Ombudsman
Date: 7 May 2021

COPY Ombudsman Provisional Decision
CIFO Reference Number: 20-000017
Complainant: [the complainant]
Respondent: The Royal Bank of Scotland International Limited, trading as NatWest International

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this decision made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.[1]

A decision shall constitute an Ombudsman Determination under our law.

Complaint

[The complainant] complains, in summary, that The Royal Bank of Scotland International Limited, trading as NatWest International, failed to identify that he was the target of a fraud. [The complainant] holds the bank accountable for not having exercised greater care in scrutinising the information he provided to it about his proposed investment strategy, together with the payee details for five payments. Had it done so [the complainant] considers that the fraud would have been uncovered such that he would not have made the payments he did.

Background

In mid-2019 [the complainant] was approached by people who we now know were fraudsters impersonating [the genuine investment firm]. They recommended an investment strategy for [the complainant] and, between July and September 2019, [the complainant] made five payments totalling £1,004,580.62 to beneficiaries [overseas].

[The complainant] subsequently came to suspect that he had been the victim of a fraud. [The complainant] contacted the bank in November 2019 but, by then, it was too late to retrieve any of the money. [The complainant] asked the bank to reimburse him for the payments he had made but it declined to do so.

[The complainant] says, in summary:

- [The complainant] discussed his proposed investment arrangements with his NatWest International relationship manager in Jersey but was not warned about the

[2] Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

possibility of the '[investment]' entity he was dealing with being a 'clone' of the real thing. The bank should have been alert to this risk in view of warnings on the UK Financial Conduct Authority's website about other [investment] entities having previously being cloned, and it should have advised him to check that he was dealing with the genuine entity.

- [The complainant] liaised with his relationship manager in Jersey about making each individual payment, providing him with the relevant instructions and copy correspondence he had received from '[the fraudulently cloned firm]'. [The complainant] actually made all five payments in person through NatWest's [redacted for anonymisation purposes] branch in the UK – who "*should have been alert to the entire context and pattern of what was happening*." At no time did the bank question the payments or the beneficiaries – including when one of the payments was delayed because of an issue with the beneficiary's name being slightly incorrect. There was never "*any action to certify that my accounts and transfers were actually being monitored and checked, to keep me safe.*"

- [The complainant] is a "*foreigner* [who] *in very recent years moved to this region and* [he] *had absolutely no idea and knowledge that such practices were even possible*." In contrast, NatWest "*had all the resources and expertise to have detected the fraudulent operation, but they failed completely to do so.*" Moreover, the bank has declined to refund his money despite its 'Secure Banking Promise' – and [the complainant] further notes that, as well as the Banking Protocol, "*in the UK, RBS/NatWest group* [has] *signed up to the Authorised Push Payment (APP) Scam voluntary code.*"

- [The complainant] is facing a devastating loss of his "*entire patrimony/net worth*."

NatWest International's position, in summary, is that:

- The nature of the service it provides to [the complainant] is limited to daily banking and the products it has available for its customers. This does not extend to discussing investments.

- [The complainant] clearly intended to make the payments he did. The bank is under an obligation to check that payment instructions are authorised by the genuine customer – which it did, both by verifying his identity at the [redacted for anonymisation purposes], UK branch and by callbacks from its payments team in the Isle of Man before the payments were made.

- The bank is under an obligation to make the payments a customer asks it to make, and "*it is only in very limited circumstances that a bank will be under a negative duty to refrain from making a payment despite an instruction from its customer.*" It does not accept that such a negative duty applies here.

- Its 'Secure Banking Promise' is not relevant to these transactions because it only relates to circumstances where a fraudster has gained access to a customer's online or mobile banking account. That is not what happened here. Moreover, the APP code to which [the complainant] has referred – the UK Contingent Reimbursement Model (CRM) code – does not apply to his payments. This is, firstly, because the bank in Jersey is not a signatory to the code but, in addition, the code only applies to UK domestic payments. However, "*even where payments are made within the UK, amongst other things, reimbursements would be contingent upon whether the victim had taken the requisite level of care*. [It does] *not believe that [the complainant's] own actions would have met this.*"

- [The complainant] "*is a senior executive, well versed in matters of business and used to dealing with his assets across different jurisdictions.*" The bank "*refutes any suggestion that at any time it failed to act with appropriate due care and skill*" when dealing with [the complainant].

Findings

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint. Where necessary and/or appropriate, I reach my conclusions on the balance of probabilities; that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

In setting out the background to this complaint I have condensed the submissions which both parties have provided to me – distilling the main points so that I may focus my findings and conclusions on what I consider to be the material issues. I take this approach because of the framework under which CIFO operates, having been established to consider complaints about financial services providers in the Channel Islands as an informal alternative to the civil courts. My findings and conclusions are, therefore, similarly set out in less detail than the submissions I have received. However, for the avoidance of any doubt, I confirm that I have read and considered everything which has been provided to me.

The impact of a loss of around £1 million is almost unimaginable; at the very least it must be a severely distressing – and I have no doubt potentially life-changing – event for [the complainant] and his family to be facing. I believe NatWest International acknowledges the considerable distress arising from his payments having been sent to what we now know were fraudulently-opened accounts, rather than for genuine [investment firm's] investments. My understanding is there is no dispute that [the complainant] remains out-of-pocket to the full extent of the five payments he made.

To determine this complaint I believe there are three issues I need to consider and decide:

1. should NatWest have identified one or more of the five payments as potentially fraudulent before [the complainant] made them, recommending that he check to make sure he was making genuine investments; and/or
2. should NatWest have raised with him the possibility that he might not be dealing with the genuine [investment firm], recommending that he check to make sure there was no underlying fraud; such that
3. flowing from both (1) and/or (2), [the complainant] would have taken some action which would have resulted in the payments not being made.

But before I do so, I believe it is appropriate for me to set out some relevant principles under which CIFO operates. Firstly, the law which give us our powers (for this case, the applicable law is the Financial Services Ombudsman (Bailiwick of Jersey) Law 2014) requires us to reach our decisions having regard to – but not being bound by – any relevant law, regulation, codes of practice, and good industry practice. In addition, and overarching this, we are required to come to our decisions on the basis of what we consider to be fair and reasonable in the individual circumstances of each complaint we consider. That 'fair and reasonable' remit means it is appropriate for us to consider the applicable wider overall position, and to take account of whatever we consider to be relevant in order to reach what we assess to be a fair and reasonable outcome in the specific case – taking into account the perspectives of both parties to the complaint.

NatWest International's submissions stress that, although [the complainant's] payments were initiated through NatWest's [redacted for anonymisation purposes], UK branch, his account is in Jersey. I infer from this that, in coming to my conclusions on these Jersey transactions, the bank considers I would be wrong to have regard to – for example – UK regulation and relevant developments in the UK relating to APP frauds of this type. However, I do not accept that – firstly as a matter of general principle for the reason I have just set out, and secondly because (even though the bank in the Channel Islands is a separate legal entity from the bank in the UK) its branch in Jersey offers its customers a set of products and services which are largely similar to those which a UK customer might receive from a comparable branch office in the UK. So, overall, and unless there is (for example) an express regulation to the contrary, I consider it is reasonable that a Jersey customer should expect to receive the same broad level of service – and, where relevant, protection – from the bank's Jersey branch as a UK customer would receive from a branch in the UK when receiving a similar service.

In any event, it's also clear from our discussions with the Jersey Financial Services Commission (JFSC) – both in the past and more recently – that for a financial services provider such as The Royal Bank of Scotland/NatWest which has a large UK presence,

the regulator expects a bank in Jersey to operate to at least the same levels and standards as its UK counterpart offices. Indeed, it would seem counter-intuitive to suggest otherwise, because that would imply an acceptance that a Jersey customer might – in comparison – receive an inferior service and/or level of protection. I cannot see how it would be fair or reasonable to say that that could generally be right. Moreover, banks in the Islands are not insulated from what is happening in the UK, especially where there are clear parallels. Indeed, there is precedent which shows that banks have followed and adopted the UK approach on issues which are broadly similar and which affect a number of their customers – for example, the assessment of Payment Protection Insurance complaints.

However, I accept that it would not be correct for me to *directly* apply UK regulation to my consideration of the circumstances of [the complainant's] complaint. Whilst it is, as NatWest says, true that – as a matter of first principle – a bank is expected to process payments in accordance with its customers' instructions, my starting point is the regulatory environment in Jersey – which includes, where relevant, the expectation I have just outlined. In addition, Principle 2 of the JFSC's Code of Practice for Deposit-taking Business (also known as the Banking Code) requires a bank, amongst other things, to act with "*due regard for the interests of its customers*". The Banking Code also requires banks to have systems in place to "*guard against involvement in financial crime*" (paragraph 3.2.3.9), along with broader and over-arching requirements relating to the management of risk (section 3.9). These risk management requirements also refer to section 5 of Appendix 1 of the Banking Code – which, in particular, sets out the requirement to have "*appropriate policies, processes and procedures* [in place] *for managing operational risk in all material products, activities, processes and systems*" (5.2). This includes, but is not limited to, "*internal and external fraud*" (5.2.5). The legal connection with the Banking Code arises from The Banking Business (Jersey) Law 1991 which, itself, sets out the threshold conditions a bank must meet to hold a registration and which, in Article 10(3)(f), refers to compliance with any code of practice. Furthermore, the JFSC's licensing policy for deposit-takers under the Banking Business (Jersey) Law 1991 requires a licensee to demonstrate it has "*due regard for the interests of its customers*" (5.1.5) and to provide "*appropriate supervision and training to its employees*" (5.1.6)

Investment frauds – such as in this case – were generally well known by the time [the complainant] made his payments in 2019. Not only had the CRM code come into force in the UK but, for example, the year before (in August 2018) the UK Financial Ombudsman Service published its *Ombudsman News* edition 145 which focused on a retrospective review of a range of complaints about fraud which it had seen over some time. That edition of *Ombudsman News* included an interview with an independent fraud investigator who summarised his experience by saying that high value APP frauds fall into three main categories, including: "*Expected payment fraud, where the victim is expecting to make a high value payment for goods or services but inadvertently makes the*

payment to an account controlled by a fraudster, typically in response to an invoice or payment request attached to an email. I believe that this is the most common type of APP fraud and cases that I have seen include a property transaction (£144k), investments (£105k) and paying a genuine builder for work done (£44k)" (my underlining).

In acknowledging that the UK CRM code does not formally extend to the Islands, in light of the above and in all the circumstances I believe it's difficult to see how it would be fair to disregard both the provenance and the intent of that code – including the support given to it by the wider financial services industry – for customer payments made by banks in Jersey. And whilst accepting that the code is limited to domestic UK payments, I consider it relevant to note that it was not the first step that had been taken in the UK to help tackle fraud and to protect banks' customers from financial harm. Although parts of the CRM code have undoubtedly strengthened that earlier protection, other parts of it have largely built on – or replicated to some extent – existing and well-established commitments and standards of good industry practice, as well as some UK legal and regulatory requirements. For example, the CRM code requires banks to detect, prevent and respond to APP scams. This is an expectation that had been created some while earlier in slightly different forms by pre-CRM code voluntary arrangements such as the UK Banking Protocol and the British Standards Institute's October 2017 'Protecting Customers from Financial Harm as a result of Fraud or Financial Abuse – Code of Practice', as well as by anti-money laundering requirements and other legal considerations.

In other words, when [the complainant] authorised his payments – and for some time before – I consider that The Royal Bank of Scotland/NatWest will have known that banks in Jersey and in the UK had been under largely similar regulatory obligations – in particular, to have systems in place to guard against involvement in financial crime, and to have appropriate polices, processes, and procedures in place for managing operational risk in relation to fraud to seek to prevent both themselves and their customers from being victims of financial crime. This includes being sufficiently aware of the indicators of fraud and bringing them to the attention of customers before they make high-value and/or unusual payments.

With all of the above in mind I now turn to the specifics of this complaint. As I have already set out, I do so on the basis of what I consider to be fair and reasonable in its individual circumstances – and having regard to, in particular, the regulatory environment in Jersey at the time.

As NatWest has identified, the starting point is that a bank is expected to act in accordance with its customers' instructions and to make the payments it's asked to make. But the question is this; should NatWest – in these specific circumstances, and in addition to the appropriate steps it took to ensure that the payments had been authorised by its genuine customer – have taken one or other of the possible further

actions I set out earlier before it made the payments and which, had it done so, might have prevented the loss which [the complainant] is facing?

I find, first of all and for the reason NatWest says, that its 'Secure Banking Promise' is not relevant to [the complainant's] payments. However, looking at what happened when the payment instructions were received by the [redacted for anonymisation purposes], UK branch and then processed, I consider that the bank had two initial and principal opportunities to identify the fraud – firstly each time [the complainant] visited the [redacted for anonymisation purposes] branch, and secondly once each payment instruction had been received by the bank's payment processing centre.

Although NatWest International has suggested to me that the [redacted for anonymisation purposes] branch was not acting as its agent when it received the payment instructions, I am not persuaded by that. [The complainant] visited the [redacted for anonymisation purposes] branch because he lives in the UK; that office accepted the instructions on behalf of Jersey, it undertook the initial identity checks, and it then sent the payment instructions for processing. As I have already set out, both [redacted for anonymisation purposes] and Jersey branches are under broadly comparable, albeit different, regulatory obligations – to act with due regard for the interests of their customers and to take reasonable steps to prevent financial crime – with the UK branch also being bound by the provisions of the CRM code. In accepting that the CRM code does not provide for customers to be reimbursed for non-UK domestic payments I do not believe that means that a branch of the UK bank should be under any lesser duty to be aware of the indicators of fraud and to bring them to the attention of customers before they make high-value and/or unusual international payments. I also find it difficult to accept that NatWest International might reasonably expect a NatWest branch in the UK – when acting on its behalf, as it did in this case – to provide any less of a service and/or protection to one of its customers than it would to its own customers or to those of any other UK branch.

In my view the same broad principles apply when NatWest had a second opportunity to identify the potential fraud – i.e., when the payments were being processed in the Isle of Man. Here, the Jersey regulatory obligations alone are relevant – but, as I have set out, these meant that the bank was under no less of an overall obligation to have been aware of the indicators of fraud and to have brought them to [the complainant's] attention before he made his high-value and unusual payments.

Furthermore, in addition to these two principal opportunities it's also the case that [the complainant] provided details of all five payments to his relationship manager in Jersey in advance of making them, together with supporting '[fraudulently cloned firm's]' correspondence. I am satisfied that there were clear indicators from the documents – which I find should have been evident to the [redacted for anonymisation purposes] branch, the Isle of Man payment processing centre, and to [the complainant's]

relationship manager – that all the payments he was asking the bank to make on his behalf could be fraudulent. They were for large and unusual amounts and, in addition, the beneficiaries ([overseas]) were not [the genuine investment firm's] entities. So I consider that one or other – but, in reality, both – the [redacted for anonymisation purposes] branch and the Isle of Man payment processing centre, together with [the complainant's] Jersey relationship manager, should have raised this possibility with him before not only the first but all subsequent payments were made. But the question then becomes this; if NatWest had done so would it have made any difference? Would it have prevented the first payment (and then any or all subsequent payments) from being made? Or is it more likely that [the complainant] would have confirmed he still wanted to go ahead?

I asked [the complainant] what 'due diligence' he had done on the entity he was dealing with. He explained to me that he had "*checked the website in their communications and it linked back to the original/genuine [investment firm] website.* [He] *also checked the [genuine investment firm] address and FCA number referred* [to] *in their communications and it all referred to genuine [investment firm] data. As all the communications and conversations looked very genuine (they all had [genuine investment firm] e-mails and were extremely articulate and knowledgeable), it never occurred to* [him] *that* [he] *was dealing with a large group of sophisticated fraudsters.*"

In light of this, and after very careful consideration, my provisional finding – on the balance of probabilities – is that that even if NatWest had identified the possibility that the payments were being made to fraudulent beneficiaries and the bank had suggested to [the complainant] that he check those details, it is more likely rather than less likely that he would still have asked the bank to go ahead and make them. I say this chiefly because it is clear that he had already done a reasonably extensive amount of 'due diligence' and had satisfied himself that he was dealing with a genuine entity. In my opinion [the complainant] is likely, therefore, to have been similarly satisfied that the payments were being made to genuine beneficiaries – such that, even if the bank had suggested the possibility of fraud, I find that any further enquiries [the complainant] might have made would more than likely have been directed towards the fraudsters rather than to the genuine [investment firm]. The fraudsters would, I have little doubt, been persuasive in their reassurance.

I also consider that there is a limit to the extent to which a bank should continue to raise or to press such an issue, and that this will reasonably vary dependent on the individual customer it is dealing with. In accepting that [the complainant] originates from [overseas] I also believe it is relevant to bear in mind that he is the [redacted for anonymisation purposes] for a substantial international conglomerate business. So he is arguably less 'vulnerable' than some other customers might be in similar circumstances, and therefore arguably better able to reach his own considered conclusions in respect of his investments and who he was dealing with. I note, for

example, that [the complainant] was aware of the UK regulator, the Financial Conduct Authority, because he told me he "*checked the [genuine investment firm's] … FCA number*."

But, as I set out earlier in this provisional decision, this is only the first issue I need to consider and determine. The second is whether the bank should also have been alert to the possibility that the entity [the complainant] was dealing with could be a 'clone' of the real thing and warned him/recommended he check to make sure. Here, there were the same three opportunities for NatWest to have done so – [redacted for anonymisation purposes], the Isle of Man payment processing centre, and his relationship manager in Jersey.

[The complainant] points to the fact that, prior to his dealings with '[the fraudulently cloned firm]' there were already warnings on the UK Financial Conduct Authority's website about different [investment] entities being cloned – although I note that the specific warning relating to [the genuine investment firm] did not appear until November 2019. However, I take his point that, for some time before he was approached by the fraudsters, the Financial Conduct Authority had been warning potential [genuine investment firm] investors about this risk. But in noting that [the complainant] did not discover this for himself as part of his own due diligence – for example, by going beyond 'checking the FCA number' – should NatWest have been aware of it and warned him?

I believe it's difficult fairly to conclude that the front-line staff at NatWest's [redacted for anonymisation purposes], UK branch who received [the complainant's] payment instructions should reasonably have been expected to be aware of this 'cloning' risk – including that other [genuine investment] entities had been cloned, as identified on the Financial Conduct Authority's warning list. But should the staff in the bank's Isle of Man payment processing centre and/or [the complainant's] relationship manager in Jersey been better informed? I have given this very careful thought and have as a result concluded – on the balance of probabilities, and notwithstanding that the bank is the professional services provider – that I would not necessarily have expected any of the individuals [the complainant] was dealing with in the bank to have known about this risk such that they should reasonably have warned [the complainant] about it before he made his payments. Instead, I consider that principal responsibility to have identified it (including checking the Financial Conduct Authority's warning list) rested much more with him than it did the bank – not least given the very significant total value of the payments he was making and that this sum represented, as he has explained, his "*entire patrimony/net worth*."

I entirely recognise that if the bank *had* given [the complainant] such a warning it is much more likely that the fraud would have come to light before he made some of, and possibly all, his payments. But, as I say, in my view it is expecting too much of the

[redacted for anonymisation purposes] branch or the Isle of Man payment processing centre staff to be aware of this specific risk, let alone to bring it to a customer's attention before a requested payment is made. I also find that, whilst [the complainant's] relationship manager in Jersey might have had more of an opportunity to know about 'clone firm' risks and the UK regulator's list, I do not consider it would be right to say he *should* have been so aware – or that, by not being, the bank can fairly be said to have breached a duty of care owed to [the complainant]. In saying this I am not entirely persuaded by the bank's stance that its relationship managers' responsibilities are necessarily quite as limited as it has sought to suggest – but, equally, I consider that [the complainant's] expectation on this specific point takes things too far.

Putting all of this this another way, in the particular and individual circumstances of this complaint I do not accept that the bank's failure to have identified and mentioned the 'clone firm' risk fairly or reasonably offsets – let alone exceeds – [the complainant's] own personal obligation to satisfy himself that he was dealing with a genuine entity. I find that the principal, and overriding, responsibility to do so rested with him.

Bringing this all together, therefore, and having regard to all that I have set out above, my provisional findings are that:

- NatWest was under a regulatory obligation in Jersey to act with due regard for the interests of its customers, to have in place appropriate training for its employees, and to have procedures in place to manage the risk of external fraud and other financial crime. The bank should, therefore – either itself, or through the [redacted for anonymisation purposes] branch given the extent of that office's dealings with [the complainant] – have identified the potential risk of fraud in respect of the payment beneficiaries he was asking it to make and drawn this to his attention. However, even if the bank had done so, for the reasons I have explained I consider that [the complainant] would – on the balance of probabilities – still have made his payments.

- I do not accept that NatWest was under an obligation to have identified the 'clone firm' risk such that it should have drawn it to [the complainant's] attention before he made his payments. I consider this goes beyond what I would reasonably have expected the bank to have known about/done in these circumstances.

Provisional Decision

I am very much aware that there is a substantial amount at stake here, and that my provisional conclusions will come as a severe disappointment to [the complainant]. However, in light of all the evidence – which I have considered very carefully – and for the reasons I have set out and explained, my provisional decision is that I do not consider that this complaint should be upheld.

However, if either party disagrees with this Provisional Decision the matter may be reviewed again, after which I will complete a formal determination.

If either party wishes me to undertake a further review and complete a formal determination, and considers they have additional evidence or observations which they have not already provided which might inform that further review, these should be sent to me at ombudsman@ci-fo.org to reach me within 30 days of the date of this Provisional Decision – that is, by 13 January 2021 at the latest.

David Millington
Ombudsman

Date: 14 December 2020