

The complaint

Mr R complains that National Westminster Bank Plc (NatWest) won't refund £28,355.13 he lost when he was the victim of a scam.

What happened

What Mr R says

Mr R says he started to attend college in September 2015. In January 2016 he was approached by an associate of the college and asked if he'd heard of bitcoin. Mr R hadn't invested before and so the person who approached him explained how it worked and introduced him to a company I'll call O. Mr R was told he could buy educational packages and with each package he bought he would receive tokens that could be used to mine coins. Mr R agreed to invest and was given access to an online portal which gave payment details. He says that he received coins in an e-wallet after each mining session and his membership was upgraded as he bought each package.

Mr R made the payments in the table below. All of the payments had the reference "Urgent Transfer". Mr R has explained this was because he was told that to get the highest package available, he had to buy packages before the deal expired. The first payment was made to a different payee to the second and third.

| Date | Amount | Transaction type |
|--------------|-------------------|--------------------|
| 25/01/16 | £3,291.78 | Online transfer |
| 28/01/16 | £9,799.22 | Online transfer |
| 04/02/16 | £14,634.13 | In branch transfer |
| Total | £28,355.13 | |

Mr R says he continued to invest without seeing any returns because he was told it was a long-term investment and it would be at least a year until the initial coin offering was publicly available.

Mr R later found out he'd been scammed when one of the founders of O was prosecuted abroad. He notified NatWest of the scam on 7 May 2020, but no funds remained. He'd like NatWest to refund the funds he lost. Mr R says that if NatWest had completed a simple online search in respect of O it would have seen warnings and poor reviews. He believes NatWest should have given him basic advice on the known scam he fell victim to and how it operated. Mr R also says he doesn't understand why NatWest won't refund him as he didn't know at the time he made the payments he was paying a criminal.

What NatWest says

NatWest hasn't refunded Mr R as it says it hasn't made any errors. It acted on Mr R's instructions and made the payments in good faith to the account details provided by him. NatWest also said it has done what it could to recover Mr R's funds.

Our investigation so far

The investigator who considered this complaint didn't uphold it. She said the payments Mr R made weren't unusual or suspicious in appearance given Mr R's normal account and payment history. She noted a number of high value payments in the period before the transactions to the fraudster, including one for £10,744.80 and that all except the third payment left Mr R with a healthy account balance. And soon after this payment was made Mr R topped the account up. In respect of recovery of funds, the investigator noted that the payments were made in January and February 2016 and the scam was reported to NatWest on 7 May 2020. She wasn't certain when NatWest contacted the receiving bank but noted it received a response on 11 May 2020 that no funds remained. Given that the scam was reported more than four years after the transactions were made the investigator felt that even if NatWest didn't contact the receiving bank on the day the scam was reported it was unlikely any funds remained.

Mr R didn't accept what the investigator said. In summary he said:

- He disagrees the payments weren't suspicious given where the funds were sent to. He thinks the fact they were going to O was a clear indicator he might be involved with an investment company that might involve fraudulent activity.
- Given NatWest's extensive experience of this type of scam it could have uncovered the scam at the time the payments were made.
- Had NatWest have asked questions it would have found out he was investing with O and could have instructed Mr R to carry out research, at which point NatWest would have realised there were numerous negative reviews about O.
- Mr R quoted BSI:PAS 2017 and in particular the section about banks having measures in place to detect suspicious transfers or activities that might indicate fraud or financial abuse.
- Mr R pointed out he's never made payments to investment companies or cryptocurrency exchanges before.

I issued my provisional decision on 3 November 2021. I have reproduced below what I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice (including the BSI code Mr R referred to in his submission to this service) and what I consider to have been good industry practice at the time, I consider NatWest should fairly and reasonably:

- *Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*

- *Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

Whilst I recognise Mr R is the victim of a scam and didn't know he was paying fraudsters these factors alone don't mean NatWest should refund him. In this case, I need to decide whether NatWest acted fairly and reasonably in its dealings with Mr R when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

Did NatWest act fairly and reasonably when it made the payments?

As I've explained above, I consider that as a matter of good practice NatWest should have been on the lookout for unusual or uncharacteristic transactions. So I've first considered whether the payment requests Mr R made were unusual or uncharacteristic.

First two payments – January 2016

Having reviewed Mr R's statements for the twelve-month period before the scam I don't consider these transactions were unusual given Mr R's normal account and payment history. In the period between 21 May 2015 and the first scam payment on 25 January 2016 Mr R had made five transactions for over £5,000 including one for £10,744.80. In the circumstances, the first payment of £3,921.78 certainly wouldn't have stood out as unusual to NatWest. And given that Mr R made a payment for £10,744.80 on 17 June 2015 I'm also not persuaded that the second payment, for a lesser sum, would have looked unusual or out of character to NatWest. As the investigator pointed out, Mr R's account was left with a healthy balance after both payments. And setting up new payees also wasn't unusual for Mr R.

These payments were the first international payments Mr R made, but I don't consider this fact in itself means the payments were sufficiently unusual to require NatWest to take any further action.

So I can't conclude the first two payments to O were unusual or out of character given Mr R's normal account and payment history. In these circumstances I wouldn't expect NatWest to take any further action or have a conversation with Mr R before making the payments. There's a balance to be struck between identifying payments that could potentially be fraudulent – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments. For this reason, I don't consider it's reasonable to expect NatWest to ask questions about payments that aren't unusual or out of character.

In any event, I wouldn't have expected NatWest to have known about the O scam at the time Mr R made his payments. Whilst there are media stories about O now, this wasn't the case in January and February 2016. And the Financial Conduct Authority warning about O was only added in September 2016, some months after Mr R had transferred his funds.

Mr R has said that NatWest should have been suspicious because he was paying O and has referred to O's account being flagged. At the time, all that was required to make a payment was the sort-code and account number. The impact of this is that the payment was correctly

processed if it went to the account number and sort code instructed by the payer (here, Mr R). There was no regulatory requirement to check the beneficiary name provided. So NatWest wouldn't have known, and had no obligation to know, who the payment was made to. It follows that NatWest didn't know that O purported to be an investment company. O's account wasn't flagged as Mr R suggests.

Also, it wasn't for NatWest to satisfy itself that O was a legitimate or registered company as Mr R suggests. What NatWest needed to do was ask Mr R about transactions that stood out as unusual or suspicious in order to satisfy itself Mr R wasn't at risk of financial harm. I've set out above why I don't consider NatWest needed to do anything more when Mr R requested the first two payments be made. So I don't need to go on to consider what might have been discussed had a conversation taken place.

Third payment – February 2016

Based on the evidence I currently have, the situation in respect of this payment is different. Mr R made this payment in branch. I've not seen any evidence to suggest any questions about the transaction were asked in branch.

By this time Mr R was making a second high-value transaction to the same payee a week after the last and the transaction left his account with a much lower than usual balance. The account balance after this payment was £205.30. In the six-month period before the scam Mr R's balance was never below £1,000. It was also the third "Urgent Transfer" in a short period of time and the third international payment. So I consider the payment was out of keeping with Mr R's prior account history. Given the combination of factors I have set out above I think NatWest should have done more when Mr R made the payment in branch.

Had NatWest have asked Mr R some questions about the payment I believe it's more likely than not the scam would have become apparent and would have been prevented. I'll set out why below.

I consider NatWest should have asked Mr R the purpose of the payment, how he heard about it, some information about the investment itself including the rate of return and whether O was FCA regulated. Given what Mr R has told this service about the nature of the investment involving educational packages and tokens to mine coins I consider NatWest should have had concerns about the legitimacy of the investment. Mr R would also have confirmed that he didn't know about Financial Conduct Authority (FCA) registration and so hadn't checked this for himself.

So, it's my belief that had NatWest asked proportionate questions and given Mr R a warning about investment scams and in particular fake and unregistered companies he would have taken additional steps before making the payment – and ultimately wouldn't have made it.

Mr R wasn't alert to the potential for fake investment companies to appear as genuine ones and provide a fake platform. NatWest was the expert here and I feel NatWest should have done more to ensure Mr R wasn't at risk of being defrauded. I see no reason why Mr R wouldn't have taken NatWest's warnings seriously if he'd been cautioned to consider and check the legitimacy of the investment before proceeding. I've seen no indication that Mr R was so anxious to proceed that he would have ignored warnings or been unprepared to postpone the payment to reflect on the matter and make these further enquiries. I'm mindful of the fact that at the time he was approached Mr R wasn't looking for an investment

I've also thought about whether Mr R did enough to protect himself before making the third payment. I'm persuaded that as a first-time investor Mr R wasn't aware of the relevance of FCA regulation. I also don't believe that at the time he invested there were enough negative reviews and articles that had Mr R completed some basic checks he should have known that O wasn't a genuine investment company. And I consider Mr R acted reasonably in making the third payment when he hadn't seen any return after the first two given what he was told about it being a long-term investment.

Recovery of funds

I've also thought about whether NatWest took reasonable steps to recover Mr R's funds once it was made aware he was the victim of a scam. The first scam payment was made in January 2016 and the last in February 2016 and the scam was reported in May 2020, over four years later. I understand that Mr R didn't know he was the victim of a scam before this, but the delay means any recovery action was most unlikely to be successful. I'm uncertain exactly when NatWest contacted the receiving bank but know it was told no funds remained on 11 May 2020. So even if there was a slight delay (and I have no reason to believe there was) I don't consider it would make a difference in this case as scammers usually remove funds within hours.

Mr R agreed with the findings in my provisional decision, but NatWest didn't. In summary, NatWest said:

- NatWest expressed concern that Mr R's complaint is being considered through a 2021 lens. The transactions in this complaint took place before BSI:PAS 2017 and the Contingent Reimbursement Model Code and NatWest's approach to the questions asked in branch has evolved since then.
- This was a sophisticated scam and it's likely any information Mr R was provided in branch would have been sufficient to persuade NatWest it was a genuine investment.
- Whilst with the benefit of hindsight O wasn't a genuine company, at the time it appeared to be a successful company run by a successful entrepreneur. Since the scam has been uncovered it's been widely publicised that O used cult like methods to convince people to invest and manipulation techniques to dismiss warnings and critics.
- There was no FCA warning at the time so it's unreasonable of me to expect NatWest to uncover the scam. Had NatWest given Mr R a warning on fake investment companies he may have taken additional steps but at the time there weren't sufficient reviews and articles to suggest O wasn't genuine.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also taken in to account the considerations I set out in my provisional decision, which I've reproduced above and which I incorporate in to this decision. Having done so, I have reached the same overall conclusion as I set out in my provisional decision, and for the same reasons.

I consider this is a finely balanced case and accept that scam prevention has improved over the years, but it's fair to say that BSI:PAS 2017 set out what had been good practice for a period of time. NatWest hasn't been able to provide any evidence that a conversation took place in branch when Mr R made the final payment of £14,634.13 on 4 February 2016. This transaction was unusual for a number of reasons (which I set out in my provisional decision) and so I consider NatWest should have asked proportionate and probing questions to satisfy itself Mr R wasn't at risk of financial harm. NatWest should also have provided appropriate investment scam warnings.

I should be clear that I don't consider NatWest staff should have identified the full nature of this sophisticated scam – or that it was NatWest's responsibility to conduct checks itself. But there were clear red flags here including the nature of the investment itself, the need to make urgent payments to secure the deal, the fact it was another international payment and the lack of regulation. I'm persuaded NatWest should have discussed these aspects with Mr R and provided him with warnings about fake and cloned investment companies and the fact his money would not be returned if the investment turned out not to be genuine.

Mr R was a first-time investor who heard about the opportunity with O through an associate at the university he attended. He was not provided with any documents in relation to O so if NatWest staff had asked, Mr R would not have been able to provide any evidence of the proposed investment, which would have been a further area of concern. I also consider Mr R's understanding of the investment was basic, as it was second-hand and he had no documentation, so he'd have struggled to answer NatWest's questions about the nature of the investment. The investment itself was also unusual in terms of buying educational packages to earn tokens to mine coins, and it would be at least a year until the initial coin launch.

It's difficult to know what would have happened if NatWest had had the kind of conversation I think it should have at the time Mr R made the third payment. As there is no evidence that the conversation took place, I need to consider what I believe is most likely to have happened if it had. On balance, I'm persuaded Mr R would have taken NatWest's warnings seriously and wouldn't have risked losing nearly £15,000 after already investing over £13,000 once he knew of the red flags and the fact there was no protection if anything went wrong. Mr R had no experience of investing and didn't know there were significant risks in investing in O. From what he's told this service I'm persuaded he'd have trusted what NatWest told him about the red flags and the unusual nature of this investment opportunity and not gone ahead and made the final payment. This is particularly so given the fact the investment with O wasn't FCA regulated.

Overall, I'm persuaded NatWest should refund the final payment Mr R made.

My final decision

For the reasons I've outlined above, National Westminster Bank Plc should:

- Refund Mr R £14,634.13 less any sum returned from the receiving bank;
- Add interest to this amount at the rate of 8% simple per year from the date of payment to the date of settlement. If NatWest deducts tax from this interest, it should provide Mr R with an appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 January 2022.

Jay Hadfield
Ombudsman