DRN-3626634

The complaint

Mr O is unhappy National Westminster Bank Plc ("NatWest") won't reimburse him after he was the victim of a scam.

What happened

Mr O was looking to buy a corporate bond and found a renewable energy company that appeared to sell them directly. He said he carried out checks on Companies House and an information sharing service and the energy company seemed legitimate based on what he could see but unfortunately the company turned out to be a scam.

Based on the information he received from scammers Mr O thought he was investing in a five year bond offering a return of around 6%. He proceeded to make two payments of £20,000 one on 12 November 2020 and one on 13 November 2020.

In January 2021, the scammers informed him the company was going into liquidation and his funds could be secured via an 'early termination scheme'. He was told he would need to pay a fee of £4,000 for this service. Throughout January the scammers continued to contact Mr O to inform him he needed to pay further fees in order to secure the return of the £40,000 he'd already paid. Overall he sent a further £20,214 across five payments.

On 26 January 2021, a day after Mr O made his final payment to scammers, NatWest contacted Mr O to express its concerns he'd fallen victim to a scam. Mr O considered things again and contacted NatWest to confirm he thought he'd been the victim of a scam.

NatWest agreed to reimburse him for 50% of his loss as it felt it could've done more to protect him, but also felt Mr O could've done more to verify the payments he was making. It also contacted the beneficiary's bank directly and was able to recover £5,008.69 of Mr O's loss.

I issued a provisional decision earlier this year. I said that:

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 be good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

NatWest has signed up to, and agreed to adhere to, the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in *all but a limited number of circumstances. It is for NatWest to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code.*

Those exceptions are:

- *The customer ignored an effective warning in relation to the payment being made.*

- *The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate*

There are further exceptions within the CRM Code, but they do not apply in this case.

Did Mr O ignore effective warnings?

The CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. The CRM code sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. As a minimum, the CRM code sets out that an effective warning should be understandable, clear, impactful, timely and specific.

NatWest hasn't been specific about what warnings exactly were shown to Mr O and has instead provided examples of general warnings that might've been displayed in addition to some general scam information it says he would've seen. I don't think anything it's provided reflects that Mr O ignored an effective warning in this case.

None of the information in the warnings was specific to his circumstances or brought to life the nature of the type of scam he was victim to. Although it directs him to a link which provides additional information about how to protect himself against scams, this is on a separate page and takes him away from the payment journey and isn't impactful.

As I don't think NatWest has been able to establish Mr O ignored any effective warnings in this case as a starting point I think it's liable for 50% of the payments he made to scammers under the CRM code. I acknowledge it's already paid this amount to Mr O.

Did Mr O have a reasonable basis for believing the payments he was making were genuine?

NatWest believes Mr O shares some liability in this case and doesn't feel it needs to compensate him any further. I've considered its points and the circumstances of Mr O's complaint carefully and I would agree that he does share liability for some of the payments he made to scammers. But, I think he had a reasonable basis for believing the first two payments, equalling £40,000 were genuine.

- *Mr O believed he was buying a corporate bond directly from an energy company. He looked the company up on Companies House and could see it was in operation. There doesn't appear to be much more information online regarding the company, but there also weren't any scam warnings or information that otherwise suggests it wasn't legitimate.*
- *The scammers provided Mr O with convincing paperwork that set out full details and information relating to the bonds he could purchase. And having reviewed this I think this information was convincing and appeared professional.*
- *The bonds offered didn't provide rates that I'd consider too good to be true. Mr O*

thought he was opting for a five year bond with a 6.2% return. Although a little high compared to the average at the time, I don't think it was so high it ought to have been obvious the situation was a scam.

- *After receiving the literature Mr O completed an online application and received a bond certificate as he would've expected. He'd bought bonds previously and it seemed this was all in order.*
- *I can see within the literature the company claimed it was regulated by the Financial Conduct Authority (FCA) which does seem unusual as it isn't a financial company. But given how convincing the other information was and given that he did think he was buying a financial product, I think it's reasonable he didn't recognise this as a concern.*
- *I've also taken into account that the literature Mr O was provided also guarantees he wouldn't suffer any loss as every customer is insured. Again I think the way this information is presented is very convincing, but I'd also add that savings bonds (which Mr O seems to have used before) are generally viewed as a very secure investment option. And although this isn't the type of bond Mr O thought he was buying here, it's not clear if he understood it was a much higher risk. In this context, considered alongside all the other information presented I don't think this would've been enough to show Mr O the situation was a scam.*

Given that Mr O could see the company was legitimate and rates seemed reasonable I don't think there's anything that ought to have stood out to Mr O as unusual or an obvious risk. So overall I think he had a reasonable basis for believing the first two payments, equalling £40,000 were legitimate.

In relation to the first two payments, I think NatWest needs to reimburse Mr O for 100% of his loss as I think he had a reasonable basis for believing they were genuine. However, I think Mr O's reasonable basis for belief had lessened by January 2021.

- *Mr O said he was told the company had gone into liquidation. But it doesn't seem there was anything online that suggested this was the case and the information on Companies House relating to the company hadn't changed and showed it was in operation. In his phonecalls with the bank Mr O seems to suggest there was a third company involved which did show as dissolved. But it's not clear what Mr O believed this company's involvement to be. And again, I can't find any information online that suggests they are linked in any way or why they would be.*
- *Mr O was initially asked to pay £4,000 to recover the money he'd invested from the liquidator, which doesn't reflect how liquidation would generally work. And I think if he had sought advice or tried to look into this process I think it would've been clear he wouldn't need to send large amounts of money up front to receive a refund of money he was entitled to.*
- *Mr O made several payments to the person he was dealing with equalling nearly £20,000 in order to obtain the return of his funds. He was told he would receive a refund of these fees and I can see he was given different, complex reasons for making them. But I'm not sure these stories seem plausible, or in line with a usual liquidation process in the UK. And all the information I can find relating to the company Mr O thought he was dealing with is based in the UK.*

I accept Mr O was fully taken in by the company, but I think upon being told it had allegedly gone into liquidation it would've been reasonable for him to try and find out more about this process and the legitimacy of paying for it before parting with more of his money, for example, by searching online or asking someone about how a liquidation process might normally work.

In the case of the final five payments Mr O made to scammers I don't think he had a reasonable basis for believing what he was told. So I agree that NatWest is only liable for 50% of these payments.

I've also considered NatWest's other obligations to protect its customers and look out for indications its customer might be at risk. I think it ought to have contacted Mr O when he made the first payment to scammers as it was for a significant amount and I think it was unusual activity compared to the general use of his account. That said, had it discussed the payment with him at the time they were made, I don't think it likely would've prevented them being made. I think Mr O appeared confident in the investment he was making and had convincing information around this as NatWest would likely expect. As I don't think the situation would've appeared to be a scam, I don't think it missed an opportunity to stop the initial payment, or any subsequent payments, from being made.

Both NatWest and Mr O accepted the findings in my provisional decision and had not further comments.

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.

As neither party has sent any further evidence or arguments for me to consider, I see no reason to depart from the conclusions set out in my provisional decision or add any further comments.

Putting things right

- In the case of the first two payments Mr O made to scammers he's entitled to full reimbursement under the CRM code (£40,000).
- In the case of the final five payments, I don't believe Mr O had a reasonable basis for believing the payments were genuine. NatWest should reimburse him for 50% of this loss (£10,107).
- NatWest should also return the £5,008.69 it was able to recover from the beneficiary's banks.

In total NatWest should reimburse Mr O £55,115.69 of his loss. I've noted it repaid him £5,008.69 on 15 March 2021 and £27,607 on 24 March 2021. It now needs to pay him the remaining £22,500.

It appears Mr O's money was held in his current account before the scam and was being used for day to day spending. To recognise the time he hasn't had access to the funds NatWest should pay simple interest on this amount at a rate of 8% from 24 March 2021, when it originally ought to have been repaid, until the date of settlement.

My final decision

I uphold this complaint. National Westminster Bank Plc needs to pay Mr O the redress set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr O to accept or reject my decision before 30 August 2022.

Faye Brownhill
Ombudsman