

The complaint

Mr R complains that National Westminster Bank Plc (“NatWest”) won’t refund money he lost when he fell victim to an investment scam.

What happened

The detailed background to this complaint is well known to both parties, so I won’t repeat it again here. Instead, I’ll provide an overview and focus on giving my reasons for my decision.

In February 2021, Mr R made a debit card payment of £5,362.50 to a cryptocurrency exchange – “M” – to purchase cryptocurrency, before it was deposited in his trading account with a company (I’ll refer to it as “B”). Mr R has explained that the ‘investment opportunity’ was recommended to him on a social media page he follows. Unfortunately, B later turned out to be a scam.

Mr R says he was promised returns by B, although he can’t remember exactly what the amounts were. He made a small deposit (which doesn’t appear to be through his NatWest account) and got a small return. He then sent a larger amount – the transaction in question – and was told he couldn’t withdraw it for a week. Subsequently, Mr R realised he’d been scammed when he tried to make a withdrawal but was told he needed to make a further payment to enable this.

NatWest refused to refund the money and rejected Mr R’s complaint. Our investigator wasn’t persuaded that NatWest acted unfairly or unreasonably in relation to this matter.

What I’ve decided – and why

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

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- The transaction in dispute was authorised by Mr R using his legitimate security credentials. So, under the relevant regulations, he’s considered liable for the loss unless there’s evidence that NatWest could and should reasonably have done more to protect him against the risk of fraud and scams *and* this would have made a difference to his decision-making.
- I wouldn’t have expected NatWest to have picked up a payment to M (the company Mr R paid) as being suspicious solely based on the merchant name, given there were no regulator warnings about it at the time of the payment. That said, I find that the transaction was so unusual for Mr R’s account that it ought to have triggered NatWest’s systems. And it did, as NatWest sent Mr R a text message to check that the transaction was genuine.
- Given the amount involved, and the fact that the payment was to a cryptocurrency exchange, I’m not satisfied that NatWest’s intervention – a text message – went far enough. I consider it would have been reasonable for it to have properly questioned

Mr R before releasing the payment. I don't necessarily think that NatWest ought to have insisted on Mr R visiting a branch to discuss the payment like he suggests. I think that a phone call would have been enough in the circumstances.

- But that isn't the end of the matter. Causation is a critical determinative factor in every fraud case. As I mentioned earlier, I'd need to be satisfied that a suitable intervention would have made a difference to Mr R's decision-making. I can't know for certain what would have happened if NatWest had properly questioned Mr R and given a scam warning before processing the payment. In such situations, I reach my conclusions not based on mere possibilities but rather on what I find most probable to have happened in the circumstances. In other words, I make my decision based on the balance of probabilities – so what I consider most likely to have happened considering the evidence and wider circumstances of the case.
- Mr R's told us that he did his research before deciding to invest with B. He checked its website which showed several registration certificates, including from the UK and Cypriot regulators. Mr R says he also used an internet search engine and it didn't bring up any untoward information about B. He explains that he felt reassured by the fact that B was recommended by the social media page he follows, adding that it has around one million followers.
- Had NatWest suitably intervened, given there were no regulator warnings about B either, any warning it could have given Mr R would have been about investment scams in general. But, from what he's told us, Mr R had already done his research before investing with B. Also, it seems to me his trust had been gained by B. On balance, I'm not convinced that an intervention from NatWest along the lines I've described would likely have affected Mr R's decision to go ahead with the payment.
- I've also considered whether NatWest could have done more to recover the funds *after* it was notified of the scam. Mr R used his NatWest card to pay M – a legitimate company – for the purchase of cryptocurrency, which was duly received. The loss he's complained about occurred when the cryptocurrency was transferred to B – the fraudulent company. In the circumstances, Mr R wouldn't have been able to claim that he didn't receive the goods or services paid for from his NatWest account; that being the purchase of the cryptocurrency. The fact that his funds were subsequently transferred on to a scammer doesn't give grounds for a chargeback against M – the only merchant that the chargeback could have been raised against.

In summary, I realise that this will come as a considerable disappointment to Mr R. Not least because the matter has been ongoing for some time. But in the circumstances, I'm not persuaded that any further discussion with NatWest would have stopped him from going ahead with the payment. I'm also not satisfied that there were chargeback rights to subsequently attempt the recovery of funds.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 October 2022.

Gagandeep Singh
Ombudsman