

## **The complaint**

Mr M complains that National Westminster Bank Plc won't refund him the money he lost when he fell victim to an investment scam.

Both sides have submitted significant volumes of evidence. In what follows I have focussed on what I consider most relevant to the outcome and, wherever possible, what follows is heavily summarised to aid readability. But I can reassure both sides that I have considered everything that has been made available to me.

## **What happened**

Mr M says that in mid-2020 he believed his health was deteriorating. He sought to invest his money with the aim of leaving an enhanced inheritance for the beneficiaries of his will.

He searched online for suitable investments. Mr M says he found one that appeared suitable, a firm called Nava Gates. Unknown to Mr M at the time, this firm was already the subject of an FCA warning, posted on 20 May 2020.

Mr M doesn't recall the exact returns that were promised by Nava Gates, but other victims of the same scam say they were told they could expect returns of up to double their investment within a month. He was told his money would be safe and could be withdrawn on demand.

Having made some initial payments Mr M saw what appeared to be good returns, and this encouraged him to invest more. Later when he attempted to withdraw money, he was told he needed to pay charges before that would be possible.

### *The payments made by Mr M*

In total, a large number of transactions were made in connection with this scam. Undoubtedly due to the volume, different transactions have been incorporated in each party's calculations, with correspondingly differing totals.

In order to provide clarity about the payments and credits that I am considering in this decision, I have listed these in the table below.

In collating this table, I have taken account of the information provided by both sides, and cross-referenced these records against the messages, emails and handwritten notes Mr M has retained from the time. I have referred to the various businesses that received Mr M's payments as A, B, C, and D. All four are cryptocurrency exchanges. All the payments apart from the first few went to either B or C.

For ease of exposition I have omitted any payments already refunded by NatWest, and omitted credits received from Mr M's friends and family, as well as other transfers he made into his Natwest account.

Date	Debit	Credit	Type	Destination /Source
02.09.20	£238.06		Card payment	A
02.09.20	€500.00		Card payment	D
03.09.20	£515.00		Faster Payments transfer	B
04.09.20		€500.00	Credit	D
09.09.20	£2.00		Faster Payments transfer	C
09.09.20		£2.00	Credit	C
09.09.20	£5,540.00		Faster Payments transfer	C
09.09.20	£4,450.00		Faster Payments transfer	C
09.09.20	£10,015.00		Faster Payments transfer	B
<b>10.09.20</b>	<b>£9,950.00</b>		<b>Faster Payments transfer</b>	<b>C</b>
11.09.20	£9,905.00		Faster Payments transfer	C
15.09.20	£5,000.00		Faster Payments transfer	C
17.09.20	£2,200.00		Faster Payments transfer	B
02.10.20	£16,000.00		Faster Payments transfer	C
06.10.20	£17,100.00		Faster Payments transfer	C
06.10.20	£450.00		Faster Payments transfer	C
07.10.20	£2,284.00		Faster Payments transfer	B
08.10.20	£10,000.00		Faster Payments transfer	C
09.10.20	£8,000.00		Faster Payments transfer	C
14.10.20	£10,000.00		Faster Payments transfer	C
15.10.20	£10,000.00		Faster Payments transfer	C
16.10.20	£1,000.00		Faster Payments transfer	C
19.10.20	£2,000.00		Faster Payments transfer	C
26.10.20	£1,000.00		Faster Payments transfer	B
26.10.20	£1,000.00		Faster Payments transfer	B
28.10.20	£9,000.00		Faster Payments transfer	C
28.10.20	£4,500.00		Faster Payments transfer	C
28.10.20	£1,300.00		Faster Payments transfer	C
04.11.20	£15,000.00		Faster Payments transfer	C
05.11.20	£15,000.00		Faster Payments transfer	C
06.11.20	£9,200.00		Faster Payments transfer	C
06.11.20	£9,200.00		Faster Payments transfer	C
10.11.20	£14,000.00		Faster Payments transfer	C
11.11.20	£6,000.00		Faster Payments transfer	C
11.11.20	£4,500.00		Faster Payments transfer	C
12.11.20	£9,300.00		Faster Payments transfer	C
13.11.20	£19,620.00		Faster Payments transfer	C
17.11.20	£20,000.00		Faster Payments transfer	C
18.11.20	£9,200.00		Faster Payments transfer	C
24.11.20		£3,100		other
26.11.20	£3,100.00		Faster Payments transfer	C
27.11.20		£6,300		other
<b>TOTAL:</b>	<b>£276,027.04</b>	<b>£9,845.24</b>		
<b>Overall net loss:</b>		<b>£266,181.80</b>		

Based on the information I've seen, I understand that these payments can broadly be categorised into two phases:

- earlier payments intended to fund investments; and,
- later payments intended to cover fees and costs Mr M was told he had to pay when he asked to withdraw money.

When Mr M exhausted his own funds, he borrowed from friends and family (to whom he says he now owes repayment).

Ultimately, Mr M was told that the 'trader' would fly over from Switzerland to London to meet him. They would bring his money with them on the plane (by this point supposedly in excess of £300,000) in the form of cash. Mr M says he instantly realised something wasn't right.

Around 24 November 2020, Mr M reported the matter as a scam to NatWest.

There were subsequent transactions relating to the scam. It appears the scammer sent Mr M two credits to his account totalling £9,400, on 24 November and 27 November. And, while by this point Mr M was aware this was not a legitimate investment firm, he sent the first of these payments to C. He says he thought it would be wrong to retain funds that he believed he was not entitled to. He did not return the second credit – in line with NatWest's instructions.

#### *Mr M's circumstances at the time*

Mr M has explained that at the time of the scam he was part way through a course of chemotherapy for a brain tumour. This had first been diagnosed in 2008 but had deteriorated. Mr M explains he suffers from epilepsy caused by the tumour and this leads to two to three daily seizures. Mr M has provided medical records to demonstrate this.

In addition, due to the pandemic Mr M was self-isolating at the time. He explains that this had left him 'in a very dark place' and caused him significant anxiety.

Mr M says all of these circumstances had a serious impact on him at the time he fell victim to the scam.

#### *NatWest's intervention*

At the point of the payment of £9,950 on 10 September 2020 to C (marked in bold in the above list) the activity on Mr M's account was flagged by NatWest's fraud prevention systems. His initial payment instruction was blocked pending a call with Mr M.

NatWest has provided a copy of that call, which lasted for approximately one hour. During the call Mr M was asked about the transaction. He was also asked about the earlier transfer he'd made on 9 September (this time to B) for the sum of £10,015.

Mr M initially told NatWest he was making the payments as his first venture into cryptocurrency. He said he was sending it to a friend who worked in an investment company. He gave NatWest the name of a genuine investment firm regulated in the UK. He said this firm was a representative of a major UK-based financial advisory network (which it is). He said he had known the adviser personally for many years.

There is no other evidence to suggest this firm or adviser had any connection to what was happening – it appears this was a story Mr M had devised. When NatWest asked Mr M to

provide the phone number on which he'd been speaking to this friend, Mr M refused and expressed concern that the bank might contact the adviser.

NatWest then asked Mr M if he had access to the accounts to which he was sending the funds. Mr M confirmed he did. Mr M also detailed his health conditions and wider circumstances.

After further questioning about the prior payment to B, and where those funds had now gone (which Mr M didn't seem to know) NatWest's representative said (twice in succession) that he thought Mr M was the victim of a scam.

Mr M responded saying that *"that's put a whole new light on it"*. NatWest then continued to ask Mr M further questions, in what seems to have been an attempt to understand what was really happening.

Mr M reiterated his story about the adviser and said they represented a large UK advisory network. He asked NatWest whether it was trying to tell him that was not a legitimate advisory network.

Mr M asked whether he really had to answer all of NatWest's questions, and said he didn't think he'd explained clearly enough that he was doing all of this himself. Mr M said he knew there were risks in cryptocurrency, but he accepted that.

At this point NatWest told Mr M it was going to decline to process the payment altogether.

Nonetheless, Mr M was told that he could resubmit it if he wished. He then asked if there was any way to stop future payments flagging and for any future need to speak to NatWest about payments like this. He said calls like this disrupted his routine and affected his sleep. He said he knew what he was doing and that this was his money (so he was entitled to decide what to do). NatWest reiterated that it would still be declining to process this payment instruction, and the call came to an end.

However, it seems Mr M subsequently resubmitted the payment and NatWest processed it without further intervention. It doesn't appear NatWest contacted Mr M about the subsequent payments he made.

#### *NatWest's position*

NatWest declined to refund Mr M for his losses from the scam. It pointed out that the transfers Mr M had made to B and C were to accounts he held in his own name and said therefore he'd not actually incurred any loss as a direct consequence of those payments. In other words, Mr M had sent money to his own accounts and NatWest was not involved in the subsequent transfers that resulted in the loss of that money.

NatWest thought Mr M should complain to the cryptocurrency exchanges from which the funds had ultimately been lost. It said it was not liable.

Mr M didn't think this was fair, and he asked this service to review the matter impartially.

I issued my provisional findings on the merits of Mr M's complaint on 8 August 2022. In my provisional findings, I explained why I intended to uphold Mr M's complaint in part. An extract of that decision is set out below and forms part of this final decision:

*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.*

*Under the relevant regulations, and in accordance with general banking terms and conditions, banks have an obligation to execute an authorised payment instruction without undue delay.*

*As a consequence, the starting position is that liability for an authorised payment rests with the payer, even if they made that payment as the consequence of a fraud or scam - for example as part of an investment scam such as this was.*

*However, where the customer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though the customer authorised the transactions. I consider that a bank also has a duty to take reasonable steps to protect its customers against the risk of fraud and scams.*

*In particular, I consider that as a matter of good industry practice NatWest should have been looking out for payments or payment patterns that were significantly out of character or unusual and that might therefore be indicative of the potential for financial detriment to its customer.*

*Here NatWest blocked and intervened just prior to the payment on 10 September 2020. Based on what I have seen I am satisfied it took this step in-line with the good industry practice I have outlined above. While I appreciate that our Investigator believed the previous payment (for £10,015) ought to have been the point at which NatWest should have intervened, I am satisfied that it was not unreasonable for NatWest to have only intervened when it did.*

*By the point of the blocked payment, I find that the bank was right to have concerns about the risk of financial harm to Mr M.*

*It took the appropriate step of contacting him before it would process his payment instruction. Weighing everything up, I am not persuaded that the evidence here supports the contention that it should have intervened earlier than the point at which it did.*

*But in saying that NatWest intervened at the appropriate point in the circumstances, I think it ought to have taken further steps than it did. During the call NatWest clearly identified that Mr M had significant health concerns and so was potentially vulnerable. NatWest further identified that he was likely the victim of a scam. It said it would not process the payment instruction he'd given it – presumably on that very basis.*

*However, NatWest allowed Mr M to resubmit the payment instruction (and to make numerous and substantial later payments) without further question despite knowing what it now knew about the circumstances. I don't consider that Mr M was particularly insistent during the call. More importantly he'd disclosed potential vulnerabilities to the bank and given the bank sufficient reason to determine that payments were almost certainly being made as a consequence of fraud.*

*In short, I don't find NatWest's actions were sufficient here. NatWest had a responsibility not to permit further payments to be made to a scheme it had already identified was almost certainly fraudulent. Having been made aware of Mr M's potential vulnerability, I'd also expect it to have taken further steps to ensure he wasn't about to suffer financial harm from fraud. Because it did not prevent this, I find it must share some of the responsibility here.*

*I have considered NatWest's argument that the payments made from its account was not the ultimate source of the loss to the fraud. But I am not persuaded that this alters my view on NatWest's share of the liability. As the investigator has already detailed, Mr M has been unable to recover any of the funds that were sent to the cryptocurrency exchanges involved. Here, NatWest had already identified that the funds were almost certainly going to be lost through fraud. Mr M was the bank's customer and was about to suffer financial harm. NatWest knew that - and should have taken further steps to prevent this harm. I am satisfied that this reflects what could reasonably have been expected of NatWest in light of good industry practice and awareness of cryptocurrency-based scams at the time.*

*Should Mr M share responsibility?*

*I've explained above why I think it is fair and reasonable for NatWest to bear some responsibility for what happened. I have gone on to consider whether Mr M should fairly share that responsibility. I will explain why I consider that it would be fair and reasonable for NatWest and Mr M to equally share responsibility for those payments I believe NatWest should have prevented.*

*I have taken into account everything Mr M has submitted and said about his circumstances and health at the time. I accept he was the victim of a cruel and aggressive scam here. I have considerable sympathy for the situation he now finds himself in.*

*But I think there were several aspects here that should reasonably have led Mr M to have had concerns that what he was being asked to do wasn't legitimate.*

*Firstly, the returns it seems likely he was offered (on a safe investment he could access whenever he needed) were significantly higher than could be expected for other investments. The terms he was being offered were arguably too good to be true.*

*Based on what I've seen, Mr M didn't take even basic steps to validate what he was being told (such as checking whether the trader was registered with the FCA) before he sent considerable sums of money. Other aspects of the arrangement, including the need to send the investment funds via various cryptocurrency exchanges, ought to have similarly raised red flags – Mr M thought the monies he sent would be invested in large companies or shares so it's unclear why he'd need to make that investment using cryptocurrency.*

*Having reviewed the call he had with NatWest in relation to one of the earliest payments to C, I have to take into account that Mr M appears to have knowingly misled NatWest about what was happening and so potentially obstructed the bank's efforts to protect him. The story he gave was a little inconsistent, but Mr M maintained it for some time. And while at one point he seems to acknowledge that what the bank has said has made him see things in a different light, he later reverts to saying that he knew what he was doing and that this was his money to do with as he chose.*

*Of course, it's possible Mr M had been asked to lie to his bank by the 'trader'. If that was the case, I think this also ought to have alerted Mr M to something being wrong. If this had been a legitimate investment opportunity, then why would he need to lie to his bank about it? This simply isn't the type of instruction a legitimate person or business would ask its customer to do. If on the other hand Mr M had concocted this story independently, I'd similarly question why he thought he needed to do so for a legitimate investment.*

*I think Mr M ought reasonably to have identified these and other causes for concern. As he proceeded nonetheless to make the payments he did, I consider it fair and reasonable that he should share equal responsibility with NatWest for the resulting losses.*

*I say this considering that in his interaction with NatWest during the intervention call he was apparently able to construct and maintain a fictional scenario to explain the payments he was making (despite some inconsistencies and hesitancy). And Mr M was able to instantly identify that the story he was told about the trader bringing such a large sum of cash on an international flight was highly implausible. With that in mind, while I have considerable sympathy for Mr M, I am not persuaded that his circumstances at the time mean he should not fairly bear a share of the responsibility.*

### **Putting matters right**

*I have found that both sides should fairly and reasonably bear an equal share of the losses from the point at which NatWest first intervened. I've set out below what that means NatWest should now do. This is based on what I have been able to establish from the evidence provided to me. But I encourage further comments if either side disagrees with what I propose here.*

*Firstly, NatWest should repay 50% of the payments made by Mr M on or after 10 September 2020. For the avoidance of doubt the payment made on that date for £9,950 should be included in the calculation.*

*In its calculation, NatWest may fairly offset any sums already reimbursed and any credits Mr M received in connection with the scam.*

*The relevant payments total £254,809.00, and the offsetting credits total £9,400.00, a net loss of £245,409.00 – so 50% equates to a sum of £122,704.50.*

*The origin of the funds Mr M lost to this scam were a combination of his own savings and money he'd borrowed from friends and family.*

*In relation to the sums he borrowed from friends and family, I'm persuaded that Mr M is now liable to repay the money he borrowed. But it would not be appropriate for him to receive compensation for being deprived of those sums. That was not being his money, so no interest award is payable in respect of that proportion of the payments.*

*In saying this, it is difficult to establish exactly which credits correspond to these borrowed sums. Based on what I can ascertain from the statement history and Mr M's comments, I currently believe this totalled £110,700.00 out of the net loss of £245,409.00. All the credits I've identified as potential borrowing from friends and family were received into Mr M's NatWest account after the date at which NatWest had intervened.*

*I understand the remainder came from Mr M's own savings. This equates to a figure of £134,709.00. NatWest should add interest to the portion refunded from this sum at an appropriate savings account rate. It may use the average account rate it offered at the time for an instant access savings account - unless Mr M is able to provide NatWest with unambiguous evidence showing an alternate rate he would have otherwise received.*

*If he accepts my final decision, Mr M must undertake to reimburse NatWest any money relating to the scam payments that he subsequently recovers (or has already been able*

*to recover) from other sources.*

I invited both sides to provide any further arguments or information by 26 August 2022, after which point, I said I would issue my final decision on the 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.

#### *Responses to my provisional decision*

NatWest did not respond directly to the points raised in my provisional decision. Nor has it raised any new arguments or provided new information. But it said it was willing to offer to refund Mr M the sum of £122,704.50, without the addition of any interest. It said this offer was being made as a gesture of goodwill.

Mr M didn't accept NatWest's proposed settlement and asked me to reach a final decision on the matter. He responded to my provisional decision, saying in summary:

- He had no new information to provide but 50% of the loss was less than he would want to accept.
- He could not recall the phone call with NatWest in September 2020, and he'd not taken any notes of it at the time. However, he didn't dispute that it must have taken place. He'd been in a very bad way at the time.
- He thought that even though he may have insisted NatWest should not call him again due to the impact of such a call on his wellbeing, it should have disregarded this and done so anyway - knowing what it did about his health.
- He hadn't seen any red flags or causes for concern in the investment at the time.
- NatWest's handling of matters after the scam had come to light wasn't as it should have been, it had treated him badly and let him down. Specifically: he'd been made to wait longer than he should have; evidence he'd offered wasn't considered; the bank had caused delays to the investigation of matters by the cryptocurrency exchanges; and, the bank had placed emphasis on whether he'd looked at a popular reviews website before investing, yet he'd never even heard of that website.

I've considered everything afresh and taken into account what Mr M has said. I want to acknowledge his comments that he genuinely doesn't recall the phone call and had never intended that it should appear as if he was trying to hide evidence. I can reassure Mr M that I do not doubt him when he explains that this was simply a call he failed to remember, given all the circumstances and with the considerable passage of time since then.

In saying that, I have listened the call and I am satisfied it was Mr M speaking to the bank at the time. I understand Mr M's point about his situation at the time and how it was impacting him. I've taken that into careful consideration when I've weighed up what I think is the fair outcome here. Mr M ultimately was the victim of a cynical scam, deceived into making substantial payments in the hope of making large profits. But equally I cannot disregard what he said to NatWest when it tried to intervene to protect him.

NatWest was placed in a difficult position. Mr M had told it (more than once) that he wanted to be reassured the bank would not call about future payments - because of the impact he said this had on his wellbeing. However, on balance, I do think NatWest needed to do more here – it had identified that Mr M was very likely the victim of financial harm. I do find the bank was at fault here.

Likewise, I consider it could have handled the subsequent scam claim more efficiently.

However, I think Mr M must share some blame for what happened, for the reasons I set out in my provisional decision (and quoted above). He had inadvertently played a part in the success of the scam, and unfortunately contributed to his own losses. On all the facts, I find this should result in a reduction of the proportion of the loss NatWest can be fairly and reasonably be held liable to reimburse.

In the specific circumstances here, I consider it fair and reasonable that both parties should share equal responsibility for the losses that resulted.

#### *Interest on the amount to be refunded*

It would be helpful to clarify the interest payment that I believe is due here.

In my provisional decision, I explained why I considered it fair that NatWest should reimburse Mr M for 50% of the net loss he sustained through the payments from 10 September 2020 onwards, this percentage equating to the sum of £122,704.50

I also explained why I considered it fair that NatWest should additionally pay Mr M interest at a rate equivalent to the bank's own instant access savings account applied from the time of each payment until the date of settlement. I said that this should apply only to that portion of the payments that had originated from Mr M's own funds.

Having stated this, I set out what I believed to be the correct proportion to be applied – based on payments to be reimbursed that originated from Mr M's own funds versus the proportion relating to borrowing from friends and family.

Given what I could establish, out of the total sum lost from the point NatWest intervened, the sum of £110,700 was borrowed and £134,709 came from Mr M's own funds.

Neither side has proposed an alternative proportion or argued with my analysis, so I see no reason to depart from that approach.

So, in short, interest should be added to the first £67,354.50 of the amount to be refunded (this equating to 50% of the £134,709 that came from Mr M's own funds). This interest should be calculated at the rate applicable to NatWest's instant access savings account from the date of each payment to the date of settlement (or nearest equivalent rate).

#### **My final decision**

For the reasons given in my provisional decision and above, I have partly upheld Mr M's complaint about National Westminster Bank Plc. I now require the bank to settle the matter as detailed above. National Westminster Bank Plc should pay Mr M:

- 50% of the net loss Mr M incurred from the payment on 10 September 2020 onwards, this percentage equating to the sum of £122,704.50, to be paid within 28 days of receiving notification of Mr M's acceptance of my final decision; plus,
- Pay interest on the first £67,354.50 of that amount, at the rate applicable to a National Westminster Bank Plc instant access savings account (less any tax properly deductible) to be calculated from the date of each payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 28 September 2022.

Stephen Dickie  
**Ombudsman**