

The complaint

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

What happened

Mr S holds an account with NatWest. In January 2020, he says he was contacted unexpectedly by a company saying it could invest his money for him. It offered a good return and said it had a 'moneyback guarantee' so he couldn't lose anything.

Mr S says he initially sent only a small sum. The company called every day, and he appeared to be making returns on his investment. However, before long they stopped making contact. Despite Mr S's best efforts he couldn't reach them. He assumed he'd lost the money he'd paid to that point.

But around a week later, Mr S was contacted by a new company (I'll refer to this as B). This company said it was actually the same firm he'd previously sent money to. He was told it had relaunched under a new name following some problems and it apologised to him for the inconvenience. B told Mr S they were now part of a genuine FCA regulated firm.

Mr S sent payments from his NatWest account to B via a wallet account held at a cryptocurrency exchange (which I'll refer to as C). Mr S then bought cryptocurrency and sent this to B.

Initially, Mr S thought all was well. He was able to log on to a website that appeared to show he was making profits. But one day, he found he couldn't access the website. He was unable to contact B again or recover his money. In total he'd sent £11,500 by this point, leaving him significantly out of pocket. Mr S reported the matter to NatWest as a scam.

NatWest didn't refund Mr S. It didn't dispute that he had been the victim of a scam but said that because the loss had occurred when Mr S sent the funds onward from the cryptocurrency exchange, it wasn't liable to reimburse him. NatWest was unable to recover any of the money he'd lost.

Mr S didn't accept this and referred his complaint to this service for an impartial review. He thought NatWest hadn't done enough to protect him, and that it should have given him stronger warning messages about the risk of this type of scam.

Our Investigator looked into the complaint. She didn't think NatWest had treated Mr S unfairly. The Investigator contacted C, the provider of the wallet account to which Mr S had initially sent his funds. C is a legitimate cryptocurrency exchange. It confirmed the wallet account had been opened in Mr S's own name, that it had been first set up in 2018, and that it had been used for several transactions during the two years prior to the disputed payments. The Investigator explained that because Mr S was transferring money from his NatWest account to an account held in his own name, the APP scam reimbursement code (the Contingent Reimbursement Model code or CRM Code) wouldn't apply.

She also didn't think the payments Mr S was making stood out significantly enough from his normal transactions to the extent that she'd have expected NatWest to intervene or take steps to warn him more than it had. So she didn't find NatWest at fault and didn't require it to refund his losses.

Mr S didn't accept this. He said someone else had received stronger warning messages from their own bank when they'd similarly tried to transfer money. He'd only been shown a general warning about scams. He thought NatWest ought to have done the same for him - and that if it had he'd have stopped and taken a look into what B was doing, thus bringing the scam to light sooner. He disagreed with the investigator that the payments he was making shouldn't have looked unusual to NatWest.

As Mr S didn't accept our Investigator's view, the complaint has been passed to me to reach a final decision on his complaint.

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.

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.

Having done so, I have reached the same conclusions as those of the Investigator.

I'm sorry to hear about what happened to Mr S. I can understand entirely why he feels his money should be returned to him. It was taken from him by scammers who'd deceived him and seem to have had no genuine intent to properly invest it for him. I can appreciate why he'd now like NatWest to refund him for what he lost, and why he wants the bank to take the blame.

It's important to acknowledge that Mr S was the victim of a crime here. Mr S has explained about the impact this has had on him. He was deceived by a scam that led him to believe he was investing his money and making significant profits. He's been left out of pocket by a significant sum as a result of this scam.

However, the main cause of these losses were the scammers who deceived Mr S.

For me to say NatWest is liable in this type of situation, I would need to find that the bank could and should have acted to prevent the eventual loss, or that it failed to meet its obligations in some other way.

It's worth mentioning at this point that a voluntary code exists to provide additional protection against APP scams (the Contingent Reimbursement Model Code – CRM Code). NatWest is a signatory to this code. But as the Investigator explained, it only applies to payments made directly to another person – payments made to a customer's own accounts aren't covered by the CRM Code.

That matters because the accounts to which Mr S initially sent money from his NatWest account were wallet accounts registered in his own name at a cryptocurrency exchange. As a result, the CRM Code provisions aren't relevant to Mr S's complaint.

However, while I therefore find the CRM Code does not apply here, that Code is not the full

extent of the relevant obligations that could apply in cases such as this.

First of all, 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 through fraud or a scam.

With all of the above in mind, I've thought carefully about whether the available evidence demonstrates that NatWest did enough given the specific circumstances here.

The first payment Mr S sent as part of this scam from his NatWest account to his wallet with C was the payment of £1,000 on 25 April 2020. However, that wasn't the first payment he'd made to C from NatWest. That appears to have been seven months earlier – three months before the scam started. The evidence provided by C appears to show that Mr S had been using the wallet with C for two years prior – I find that evidence persuasive.

So as a starting point, this was a payment to a payee to which Mr S had previously sent money. By the nature of the destination NatWest also knew this account must be one he held in his own name. At initial inspection I don't think there was anything here that would reasonably have prompted NatWest to have had concerns about where he was sending these payments.

Mr S argues that the pattern and size of the payments was uncharacteristic of his prior account usage. The largest payment he sent to C was for £8,000, so for a larger sum than other recent (legitimate) faster payments he'd made – for which the highest had been £5,000.

Ultimately, the test I need to apply here is whether the evidence is such that I consider NatWest ought to have had significant concerns that these transactions could be indicative of possible financial harm through fraud or a scam – to the extent that this would have overcome its primary obligation to carry out Mr S's payment instructions.

And while I've carefully considered the points Mr S has made, I don't consider these payments, including the £8,000 payment, were so significantly out of character or unusual that I could find NatWest at fault for not having taken further steps. Neither can I hold it liable for not providing Mr S with a stronger warning when there was no obligation on NatWest to do so for transactions of this nature. I say that because, while the payment of £8,000 was 60% larger than the earlier legitimate payment he'd made, the size of payment wasn't so much larger that *in itself* this factor should have been a cause for concern. I'd expect the bank to take into account the other factors here, including that the payment was going to an account in Mr S's own name and one to which he'd previously sent money.

On balance, and taking everything into consideration, I do not find that there was enough here for me to say NatWest should have intervened rather than fulfil its primary obligation to

carry out Mr S's instructions.

Further I am satisfied that when NatWest was made aware of the scam, it took the appropriate actions. This included its attempts to recover Mr S's lost funds – however, they'd already been moved on from C to B in the course of the scam, and nothing remained with C to be recovered.

Overall, I don't find NatWest was at fault here. I can't fairly require NatWest to refund these payments.

In saying this, I want to stress that I am very sorry to hear about what happened to Mr S and I am sorry he has lost out. He was the victim of a crime and a cruel scam carefully designed to defraud him of his money. I appreciate that what he's lost here is a significant sum. But it is simply the case that I don't find NatWest was at fault in making these payments in line with the instructions he gave the bank at the time, and I don't find the bank liable to refund him for any other reason.

My final decision

For the reasons given above, I do not uphold Mr S's complaint National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 December 2022.

Stephen Dickie
Ombudsman