

The complaint

Mr G complains that National Westminster Bank Plc ("NatWest") won't refund money he lost to a cryptocurrency investment scam.

What happened

In February 2021, Mr G came across cryptocurrency investment on social media. He states he completed an enquiry form and subsequently started receiving several calls a day from individuals offering investment services.

Mr G says he engaged with two brokers, Live-Bit and Trendsmacro, and was sold an investment opportunity. He's told us that the brokers said he could get returns in the region of 50-100% within a month. Mr G told NatWest that he was told he could expect 10% return each month.

Between 25 February and 10 March, Mr G sent just over £70,000 to his 'trading' account. Mr G first sent money from his NatWest account to another company called Coinbase. It converted his funds into cryptocurrency, which Mr G then sent on to his 'trading' account. Unfortunately, the trading platform turned out to be a scam.

The transactions relevant to this complaint are set out below.

Transaction Date	Type	Merchant/Payee	Amount
25 February 2021	Faster payment	CB PAYMENTS	£2.00
26 February 2021	Faster payment	CB PAYMENTS	£5,000.00
1 March 2021	Faster payment	CB PAYMENTS	£5,000.00
2 March 2021	Faster payment	CB PAYMENTS	£300.00
2 March 2021	Faster payment	CB PAYMENTS	£13,000.00
3 March 2021	Credit	Coinbase	£329.79 (credit)
3 March 2021	Faster payment	CB PAYMENTS	£3,000.00
3 March 2021	Faster payment	CB PAYMENTS	£15,000.00
3 March 2021	Faster payment	CB PAYMENTS	£2,000.00
4 March 2021	Faster payment	CB PAYMENTS	£5,000.00
4 March 2021	Faster payment	CB PAYMENTS	£15,000.00
5 March 2021	Credit	Coinbase	£500 (credit)
5 March 2021	Faster payment	CB PAYMENTS	£5,000.00
10 March 2021	Faster payment	CB PAYMENTS	£2,000.00
17 March 2021	Credit	Coinbase	£181.41 (credit)
		Total payments	£70,302.00
		Less credits	£1,011.20
		Total loss	£69,290.80

Mr G eventually realised he'd been scammed, and he reported the matter to NatWest on 18 March 2021. It refused to refund the payments and asked Mr G to contact CB PAYMENTS as the loss occurred when it sent the cryptocurrency into his crypto wallet.

Our investigator upheld Mr G's complaint. They thought that NatWest didn't sufficiently question Mr G when the £5,000 payment on 26 February triggered its fraud detection systems. Had it done so, the investigator thought it likely that the bank would have uncovered the scam, thereby limiting Mr G's loss. So, they recommended that all payments Mr G made from that point onwards be refunded less the credit already received.

NatWest disagreed with the investigator's findings and said that Mr G needed to raise his concerns with CB PAYMENTS. It said the actual point of loss was when it transferred the funds received from Mr G's NatWest account into his crypto wallet with Coinbase which the scammer had access to.

I issued my provisional decision a few days ago and explained that while I intended upholding this complaint, I planned to make a deduction for contributory negligence.

I invited further comments from both parties in response to my provisional decision. Mr G and NatWest have replied. Mr G hasn't provided anything further for me to consider. NatWest has said it accepts the award I intend to make. So, what follows is my provisional decision made final.

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.

Under regulations, and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

The payments Mr G made to the fraudulent company weren't sent directly from his bank account to the company's. All payments were made via another account in Mr G's name which he had control over. Under these circumstances, the Lending Standards Board's Contingent Reimbursement Model (the CRM Code), which requires signatories such as NatWest to reimburse customers who are victims of scams like this one in all but a limited number of circumstances, doesn't apply.

While I find the CRM Code doesn't apply here, that code is not the full extent of the relevant obligations that could apply in cases such as this. In accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customers as a result.

NatWest argues that the transfer from Mr G's account with it to CB PAYMENTS hasn't caused him any loss. I've considered that the disputed payments were sent to a legitimate crypto platform. I accept that buying cryptocurrency is a legitimate exercise. But both the Financial Conduct Authority (FCA) and Action Fraud had warned of crypto exchange and forex trading scams in 2018. And in May 2019, Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something that regulated businesses, including NatWest, ought to take notice of.

Even though Mr G was transferring funds to an account (crypto wallet) in his name, NatWest ought to have been on the lookout for unusual and out of character transactions. While the transfers were made to his own wallet, scams involving transfers to cryptocurrency accounts were well known to banks by this time and I therefore think that where payments were also out of character, potential losses were foreseeable to the originating bank.

I've considered the operation of Mr G's account in the months leading up to the disputed transactions. I don't consider the initial payment of £2 to be unusual or suspicious such that I think NatWest ought to have intervened at that point.

The next transaction – £5,000 on 26 February 2021 – was substantially higher than the other transactions on Mr G's account (there were some large-value transactions in May 2020, but they were transfers between Mr G's NatWest accounts). I find that this transaction was so unusual that NatWest's systems ought to have triggered an alert and the payment paused, pending further enquiries. The information I've seen suggests that Mr G first attempted to make this payment online. But when that didn't work, he phoned NatWest and an agent took his payment instructions.

I've listened to the call between NatWest and Mr G. The agent took Mr G through additional security before sending a verification code to his mobile phone. He then read a scam script and asked Mr G a few questions such as why he was making the payment; whether he'd received a call from someone purporting to be from his bank, police or HMRC; or offering to help him during the COVID-19 pandemic. Mr G responded with a no to the questions. Before making the payment, the agent asked Mr G if he had any concerns about the payment and whether he was happy to make it, and he confirmed that he was.

Having carefully thought about this, I'm not satisfied that NatWest went far enough in making enquiries about the payment in question. Given the amount involved, and the fact that the payment was to a known crypto platform, I consider that it would have been reasonable for NatWest to have properly questioned Mr G before executing his authorised instruction. Even if he had been sending money to a legitimate crypto platform, it didn't follow that Mr G's money was safe, or that he wasn't at risk of financial harm due to fraud or a scam. By the time Mr G made the payments, I think NatWest had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or account.

Had NatWest done more and warned Mr G about cryptocurrency scams, I've no reason to doubt that he would have explained the true purpose of his payment, as well as how he came to know about the investment opportunity. I can't see that Mr G been given a reason to think he had to hide this information from his bank. Neither had he been coached to tell them something different. I'm satisfied that Mr G would have looked further into the investment opportunity in general, including whether the brokers he'd been dealing with were regulated here in the UK or abroad. He could have discovered that they weren't. Indeed, it's likely that Mr G would have come across the various warnings about cryptocurrency scams.

I'm therefore persuaded that a more relevant and meaningful intervention from NatWest at that time would likely have exposed the scam and caused Mr G to stop from going ahead with the payment, thereby preventing further losses.

Contributory negligence

I've also carefully thought about whether Mr G is partly to blame for what happened. This is where my findings differ to that of our investigator. It doesn't appear Mr G carried out much due diligence, if any, before deciding to invest, even when investing higher amounts. It is

reasonable for independent research to be carried out to be satisfied that an investment opportunity is genuine. I think being told the rate of return he could expect ought to have raised suspicions with him.

So, I do think Mr G ought to bear some responsibility for his losses and that compensation should be reduced accordingly. Having thought about this carefully, given the imbalance of knowledge between the parties, I consider that it would be fair to reduce compensation by 20%.

Putting things right

To put matters right, National Westminster Bank Plc needs to reimburse Mr G all the disputed payments from 26 February 2021 onwards less £1,011.20 that has already been recovered, making a 20% deduction for contributory negligence.

As the payments came from a current account, I consider that it would be fair and reasonable for the bank to also add simple interest at 8% per year, calculated from the date of loss to the date of settlement (less any tax properly deductible).

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require National Westminster Bank Plc to put things right for Mr G as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 11 January 2023.

Gagandeep Singh
Ombudsman