

The complaint

Mr T complains National Westminster Bank Plc (NatWest) won't refund the money he lost when he fell victim to a scam.

What happened

Mr T fell victim to an investment scam. He was persuaded to set up an account with an Electronic Money Institute (EMI), in order to make cryptocurrency purchases to send on to what he thought was a genuine investment platform. Unfortunately for Mr T, it appears the platform was fake; his funds weren't really being invested.

Mr T used his NatWest credit card to send just under £1,000 (plus fees) to his EMI account in March 2022. The following day, he paid a further £2,000 over ten payments, again incurring fees. He says this money was sent on and lost to the scam. And that the scammers also persuaded him to increase his credit limit.

Mr T was also using his NatWest current account to send scam payments via his EMI account (our service has considered a separate complaint about this). NatWest received a report he had received fraudulent funds *into* this account. It was through looking into this that the scam was uncovered.

Mr T complained to NatWest about the credit card payments. He said it should have intervened due to the frequency and value of the payments, and the increase in his credit limit. But it said his fraudulent loss hadn't occurred from its accounts, but from the EMI account the funds were sent on to – so it wasn't liable for his loss.

Unhappy with this response, Mr T referred the matter to our service. Our investigator didn't uphold his complaint. She found NatWest had identified payment attempts on each day as fitting fraud trends and had spoken to Mr T – who confirmed the payments as genuine and said they were for home improvements. She noted he hadn't revealed the true reason for the scam payments NatWest questioned him about on his current account either. Overall, she didn't think it was at fault for not preventing (or recovering) the loss.

Mr T has appealed the investigator's outcome, so the case has been passed to me to decide. In summary, Mr T says he doesn't remember speaking to NatWest about the credit card payments – and we shouldn't consider the calls about his current account. He thinks NatWest should have noticed everything going on with his account(s) and stopped it, as he wasn't aware he was being scammed and was being coached on what to say. He also says he has been advised that he should be protected by Section 75 of the Consumer Credit Act 1974 (s75) for fraudulent payments made using a credit card.

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've decided not to uphold it. I'll explain why.

It's agreed Mr T made these payments. That means he is presumed liable for the resultant loss incurred in the first instance – as NatWest has a duty to follow Mr T's authorised payment instructions without undue delay. But there are circumstances when it might be appropriate for NatWest to identify a fraud risk and to therefore take additional steps before processing a payment. That might occur if the payment is significantly unusual when compared to the normal use of the account – or fits a known pattern of fraud.

Here, I can see NatWest did identify some of these payments as characteristic of fraud. And it did so fairly early on, after the first payment (which I don't think it had cause to be concerned about). So, the key question I'm considering is whether its intervention was appropriate – and if not, whether it ought to have been able to uncover the scam.

NatWest declined a payment attempt of £2,000 on each day, in order to speak to Mr T about what he was doing. I'm aware Mr T says he doesn't remember this, but I've listened to these calls. In them, he confirmed it was him making the payment requests, and told NatWest he was moving funds to his EMI account to pay for home improvements.

If Mr T had disclosed he was actually moving the funds to the EMI to fund an investment, I would have expected NatWest's line of questioning to have been different. But given what Mr T told NatWest about the payments, I don't think it had cause to suspect that he was falling victim to this type of scam. Which is why it wasn't able to warn him of the specific/relevant risks, in order to stand a reasonable chance of breaking the spell of the scam.

I know Mr T is unhappy the investigator considered the calls he had with NatWest about the payments from his current account (which he does recall). However, it's down to our service to determine what information we need to decide his case. I'm satisfied this information is relevant to the decision I'm making here. It is more evidence that Mr T wasn't being truthful with NatWest about why he was making these payments. Which furthers the case for why, even through more questioning/intervention, it seems unlikely NatWest would have unravelled the scam.

I appreciate Mr T has said he was being coached and didn't realise he was falling victim to a scam. And that he was in vulnerable circumstances which made him more susceptible to it. I don't doubt what he's told us on that front. However, in deciding whether NatWest should refund him, what I'm looking at is whether *NatWest* is at fault for what happened.

I don't think NatWest had cause to think Mr T's credit limit increase indicated he was falling victim to a scam. I'd also point out it doesn't appear he ended up using this increase to send more on to the scam from this account than he would have if the limit hadn't been increased.

In all the circumstances, I'm not persuaded NatWest ought to have prevented the scam. I think it appropriately identified an indication of fraud risk, and that it asked Mr T reasonable questions in response to this. It's just that, regardless of why Mr T answered how he did, his responses didn't make it clear to NatWest that he was falling victim to a scam.

I'm also not persuaded NatWest ought to have been able to recover the funds. In some circumstances, funds sent by card can be recovered via the bank raising a chargeback dispute. There are limited grounds for such claims, and the scheme is voluntary. I'd only expect NatWest to raise a claim if there were good prospects it would succeed in line with the scheme rules.

Here, the card payments made were to send funds to Mr T's EMI account. From what we've been told, the issue isn't that the funds didn't arrive; it's just that Mr T then transferred them on to the scam (and it's possible this was done via a further intermediary, such as a cryptocurrency wallet, before being lost to the scam). So I don't think NatWest has acted unreasonably in failing to pursue such a claim – as in those circumstances it would have had very little prospect of succeeding.

Mr T has more recently mentioned his rights to raise a s75 claim. But I can't see that he has raised one, so there is no claim outcome for me to consider. In any event, there are a number of considerations stipulating when such a claim can be raised/would succeed.

I do realise this will be very disappointing for Mr T, but I don't consider it would be fair to direct NatWest to refund him for his loss. That's not to take away from the fact he has fallen victim to a sophisticated scam, with the scammers seemingly using social engineering tactics – as well as fake software – to trick him. It's just that, having carefully considered all the circumstances, I don't think Mr T's loss was caused by a failing on NatWest's part.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 19 April 2024.

Rachel Loughlin
Ombudsman