

The complaint

Mr P complains that his bank National Westminster Bank Plc (NatWest) has refused to refund the money he has lost following him falling victim to a scam.

What happened

In my provisional decision sent in June 2023 I explained why I thought this complaint should be upheld. I said:

'It has not been disputed that Mr P has fallen victim to a cruel scam. The evidence provided by both Mr P and NatWest sets out what happened clearly. What is in dispute is whether NatWest should refund the funds Mr P lost due to the scam.'

Recovering the payments Mr P made

Mr P made payments to X via his debit card. Although Mr P didn't make these payments to X directly, instead he made the payments to the cryptocurrency exchange Cro. When payments are made by card the only recovery option NatWest has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr P was dealing with X, which was the person that instigated the scam. But Mr P didn't make the debit card payments to X, or the platform provided by X directly, he paid a separate cryptocurrency exchange (Cro). This is important because NatWest was only able to process chargeback claims against the merchant he paid (Cro), not another party.

The service provided by Cro would have been to convert or facilitate conversion of Mr P's payments into cryptocurrency. Therefore, Cro provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr P paid. As Cro provided the requested service to Mr P any chargeback attempt would likely fail. Should NatWest have reasonably prevented the payments Mr P made?

It has been accepted that Mr P authorised the payments that were made from his account with NatWest, albeit on X's instruction. So, the starting point here is that Mr P is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether NatWest should have been aware of the scam and stepped in to prevent the payments from being made.

The first payment Mr P made in relation to the scam for £419.76 did not trigger NatWest's fraud prevention systems. I don't think this is unreasonable considering the value of the payment was relatively low and was being made to a legitimate cryptocurrency exchange.

However, after the first payment was made Mr P attempted several higher value payments that were stopped by NatWest prompting it to have two conversations with Mr P on 26 November 2021.

When a business picks up on payments it considers could be fraudulent or in relation to a scam, I would expect it to ask the customer meaningful questions to help discover what the payments are in relation to.

During the first call the NatWest advisor simply asks Mr P if he was attempting to make payments to two separate cryptocurrency exchanges (Cro and Binance). In the second call the NatWest advisor confirms that other payments that were also blocked were made by Mr P. The advisor then explains that a marker will be placed on Mr P's account to allow future payments.

At no point during either of these calls did NatWest ask Mr P any meaningful questions to ascertain how the payments had come about or what Mr P was making the payments for. I have no reason to believe that had NatWest asked Mr P meaningful questions about the payments that he wouldn't have answered honestly, and NatWest would have uncovered the scam that was taking place.

I think NatWest missed an opportunity to prevent the scam continuing past the first payment made by Mr P and is therefore responsible for all the payments Mr P made into the scam, less the first payment.

Our Investigator said that as Mr P was investing in cryptocurrency with another exchange and continued to invest in cryptocurrency after the scam that Mr P wasn't risk adverse and would probably have made these payments in any event. But I disagree as I think that had NatWest asked relevant questions and told Mr P he was likely being scammed he would not have made any more payments as directed by X. The fact that Mr P decided to continue to invest in cryptocurrency outside of the scam does not mean he would have ignored a clear warning from NatWest that he was being scammed.

Did Mr P contribute to his loss?

I think this was a sophisticated scam and Mr P couldn't have reasonably foreseen that he was dealing with a scammer. Mr P was able to see balances on his trading account, and X had built trust with Mr P. I don't think he could have reasonably known that the trading balance was likely fake or a simulation – unless prompted by his trusted bank.

Overall, I don't think Mr P contributed to his losses, so I don't suggest the overall settlement be reduced.'

I gave Mr P and NatWest time to respond to my provisional decision.

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.

Mr P agreed with my decision. NatWest didn't agree as it said there were red flags that should have highlighted to Mr P that the investment was not legitimate. NatWest also said it couldn't be sure of Mr P's loss as it had not seen evidence of the transactions from his own cryptocurrency exchange account.

The comments made by NatWest have not changed my decision. Although Mr P was initially contacted by X via social media, X built Mr P's trust before he parted with any money and as explained above Mr P was also able to see his investment through a convincing trading platform that he would not have known was either fake or a simulation. So, I don't think Mr P contributed to his loss, or that he should share responsibility for it.

Mr P has also provided screenshots of the transfers from his cryptocurrency account that have been sent to NatWest. NatWest could have asked for this information sooner if it was required.

Putting things right

National Westminster Bank Plc should refund Mr P the payments he made into the scam less the first payment of £419.76.

To compensate Mr P for having been deprived of this money, National Westminster Bank Plc should also pay Mr P interest on the loss at 8% simple per year, calculated from the date they were paid, to the date of settlement.

My final decision

I uphold this complaint and require National Westminster Bank Plc to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 August 2023.

Terry Woodham
Ombudsman