The complaint

Mr P is unhappy National Westminster Bank Plc ("NatWest") won't reimburse him after he was the victim of a scam.

What happened

Both parties are aware of the details of this scam so I will only provide a brief outline of what occurred.

In summary, Mr P came across an advert for a trading company that I will call B. It purported to have a trading system trading in Gold and Forex. Mr P signed up to this and made the following payments to an Electronic Money Institution (EMI) that I will call C. Once he sent his funds to C he then had to provide proof of the deposit to a trading platform that I will call D. On this platform Mr P could see his "profits" increasing. When he tried to withdraw his profits, he was unable to do so and he realised that he had been scammed. Mr P made the following payments in total as part of this scam;

Transaction Number	Date	Type of Payment	Amount
1	14 November 2022	Faster Payment	£600
2	22 November 2022	Faster Payment	£400
3	28 November 2022	Faster Payment	£100
4	29 November 2022	Faster Payment	Credit £58.56
5	29 November 2022	Faster Payment	£3,000
6	5 December 2022	Faster Payment	£2,000
7	8 December 2022	Faster Payment	£1,000
8	14 December 2022	Faster Payment	£5,000

Mr P complained to NatWest and asked that he be provided with a refund. NatWest declined to do this.

I issued a provisional decision in which I said the following;

> *"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*
>
> *It isn't in dispute that Mr P authorised the disputed payments he made from his NatWest account. The payments were requested by him using his legitimate security credentials, and the starting position is that NatWest ought to follow the instructions given by its customers, in order for legitimate payments to be made as instructed.*
>
> *However, I've considered whether NatWest should have done more to prevent Mr P from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.*
>
> *In this instance the payments were not out of character, Mr P had made many larger payments to investment firms prior to the payments in question. The pattern of the payments on their own was not sufficiently indicative of a scam to have prompted an*

intervention either. So, I don't think that NatWest needed to intervene or could have stopped the scam.

NatWest has signed up to, and agreed to adhere to, the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances. It is for NatWest to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- *The customer ignored an effective warning in relation to the payment being made.*
- *The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate*

There is another exception to this when a customer sends payments to an account in their own name. NatWest believes that this was the case in the instance. However, I disagree, I have been provided with communications from the scammer which shows it providing the bank account details with C that Mr P sent the funds to. This clearly states that the name of the account is B rather than Mr P's own account. Moreover, looking at the references supplied during the transactions it seems unlikely that Mr P would attach a reference to each transactions stating the name of B to a payment that was being sent to his own account.

NatWest have provided evidence that says that Mr P would have had to create an account with B and D as part of the scam and that is where the funds went. But the funds were not sent to B or D they were sent to C, which I am satisfied, albeit on balance, was an account in the name of B.

I should also add that the funds were never sent from C to D. D is not a real trading company it was (as it no longer exists) a simulation scam platform working with B. After all if it was a real trading platform why could it not accept funds directly to it and required an e-mail with a receipt of payments to C in order to "update" Mr P's account balance. If D was real, Mr P would also need to have been able to withdraw its funds.

So, I think that Mr P sent funds to a bank account based in the UK in another parties name so I think that the CRM does apply. I will now consider the other exceptions listed above.

Did Mr P ignore effective warnings?

The CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. The CRM code sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. As a minimum, the CRM code sets out that an effective warning should be understandable, clear, impactful, timely and specific.
NatWest hasn't been specific about what warnings exactly were shown to Mr P and has instead provided examples of general warnings that might've been displayed in addition to some general scam information it says he would've seen. I don't think anything it's provided reflects that Mr P ignored an effective warning in this case.

None of the information in the warnings were specific to his circumstances or brought to life the nature of the type of scam he was victim to. So, I don't think that an effective warning was provided.

Did Mr P have a reasonable basis for believing the payments he was making were genuine? In this case, whilst B's website looked realistic and Mr P started "investing" with a small amount and received a withdrawal before sending larger amounts I think there were a few red flags that he ignored.

Mr P seems to be a relatively experienced investor I can see large payments in the year prior to this being sent to a different online trading platform. Mr P says he was being promised a return in excess of 10% per week. This seems to be guaranteed by B based on its website from the time. Even if Mr P had relatively limited experience, he should be aware that this is completely unrealistic. In addition, Mr P had not received any paperwork which is not how a professional investment firm generally operates. Finally, Mr P was in contact with B mainly through a social messaging tool which again does not seem indicative of a legitimate investment firm.

I therefore, don't think that Mr P had a reasonable basis to believe that the investment was genuine and therefore he should be liable for 50% of the transactions in question.

I have considered what NatWest could have recovered the funds by contacting the receiving bank. But given the timescales involved between Mr P being scammed and NatWest being informed I find it unlikely that the funds would have remained there. So, I don't think that NatWest could have recovered the funds via other means.

So overall I currently uphold this complaint in part as I think NatWest did not provide an effective warning but that Mr P should be liable for 50% of the transactions in question."

Mr P agreed with my provisional decision. NatWest provided an example of the warning that Mr P may have seen dependent on the reason he provided for why he was sending the funds to C.

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.

I have carefully reconsidered all the points that have been raised and I remain of the opinion that this complaint should be upheld in part. I note the warning that NatWest says that Mr P may have seen, dependent on what payment purpose he selected, but I don't think that this warning is detailed enough to bring to life enough key features of the scam that Mr P was caught up in. So I don't think in this specific case that he was given an effective warning.

So overall, I think that NatWest did not provide an effective warning but Mr P did not have a reasonable basis of belief that the payments were for genuine goods or services when he made the payments so I think that this complaint should be upheld in part.

Putting things right

I uphold this complaint in part and instruct National Westminster Bank Plc to pay Mr P:

- 50% of the outstanding loss of the transactions complained about.

- 8% simple interest per annum on that amount from the date of each payment to the date of settlement, less any tax lawfully deductible.

My final decision

My decision I uphold this complaint in part and direct National Westminster Bank Plc to pay the redress outlined above.

Charlie Newton
Ombudsman