

The complaint

Mr and Mrs P complain that National Westminster Bank Plc ("NatWest") won't refund over £141,272.05 they lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief summary, Mr and Mrs P fell victim to an investment scam in January 2021 after finding an investment broker ("S") online.

S encouraged Mr and Mrs P to invest, leading them to make the following payments over the next six months:

Date	Amount	Payee	Payment method
05/01/2021	£497.24	S (SIPAY)	Credit card
05/01/2021	£496.67	S (SIPAY)	Credit card
22/01/2021	£2000	Luno	Faster payment
19/02/2021	£14,500	Luno	Faster payment
25/02/2021	£4,766.77	Luno	Faster payment
26/02/2021	£8,400	Luno	Faster payment
25/03/2021	£10,000	Luno	Faster payment
16/04/2021	£20,800	Luno	Faster payment
26/04/2021	£35,311.37	Luno	Faster payment
02/06/2021	£15,000	Luno	Faster payment
04/06/2021	£14,000	Binance	Faster payment
21/06/2021	£15,500	Binance	Faster payment

Mr and Mrs P realised they had been scammed in June 2021 when their son overheard a conversation with the scammer. They reported the fraud to NatWest, who declined to offer a refund of the money they had lost.

Our investigator didn't uphold Mr and Mrs P's complaint. She didn't think any of the payments would have appeared particularly unusual in light of Mr and Mrs P's account history as they had made larger transfers in the past. She also didn't think an intervention

would have likely prevented them from making the payments. Mr and Mrs P disagreed, so the matter was escalated to me to determine.

I issued my provisional decision on this complaint in September 2023. I said I was minded to uphold it and set out the following reasons:

It isn't in dispute that Mr and Mrs P have fallen victim to a scam here, not that they authorised the disputed payments they made from their NatWest account and credit card. The payments were requested by them using their legitimate security credentials provided by NatWest, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether NatWest should have done more to prevent Mr and Mrs P from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

Credit card transactions

In terms of the two credit card transactions Mr and Mrs P made directly to the scammer, I'm not persuaded these would have appeared particularly unusual or out of character. Cumulatively, the two payments did not exceed £1,000, so I don't think there was any cause for NatWest to have been concerned. There was also no FCA or IOSCO warning about the merchant at the time that would have required the bank to automatically block the card payments. As a result, I don't think NatWest was required to block or question Mr and Mrs P about these payments, so I don't intend asking it to refund them.

I've also thought about whether NatWest could have done more to recover the funds after Mr and Mrs P reported the fraud, as in some circumstances money spent via credit card can be recovered via the bank raising a chargeback dispute.

However, there are very limited options for payments that have gone to any type of investment. Mr and Mrs P's claim was that they could not withdraw their funds from their trading account with S and that they were operating fraudulently.

Mastercard's scheme does not consider claims about being unable to withdraw funds from trading accounts and the scheme doesn't provide dispute resolution options for victims of alleged fraud. So, given there would be no reasonable prospect of a chargeback succeeding in these circumstances, I don't think NatWest acted unfairly by not pursuing a chargeback for the credit card transactions.

There is also the potential of Mr and Mrs P making a claim under Section 75 of the Consumer Credit Act 1974. However, NatWest has said that it hasn't had a chance to consider such a claim, and I can't see that Mr and Mrs P have raised one before bringing their complaint to this service either, meaning it wouldn't be fair for me to pre-determine the claim before NatWest has had a chance to look into it. As such, Mr and Mrs P should get in contact with NatWest to raise a Section 75 claim should they wish to pursue one and provide the necessary evidence it has requested. If they are unhappy with the outcome NatWest reach on that claim, they can then refer the matter back to this service as a separate complaint.

Faster Payments

In terms of the faster payments made to Mr and Mrs P's Luno and Binance wallets, I don't think those that were made between 22 January 2021 and 16 April 2021 were unusual enough in themselves to have warranted an intervention by NatWest.

I appreciate that one of these payments of £20,800 was particularly large compared to the others made to Luno. But I can see that a larger faster payment of £22,091.14 had already been made from Mr and Mrs P's account within 12 months prior. I acknowledge that it may have only been for a credit balance refund, but it nonetheless builds a picture of what is to be considered as usual account activity, particularly when it comes to faster payments being made from the account.

However, by the time Mr and Mrs P came to make the payment of £35,311.37 on 26 April 2021, this marked a significant increase in spending and ought reasonably to have been considered as out of character by NatWest.

NatWest has highlighted a payment of over £50,000 being made from Mr and Mrs P's account on 3 March 2020 to demonstrate why a payment for around £35,000 wouldn't have appeared unusual. However, this payment took place over a year before they made the payment of £35,311.37 on 26 April 2021. There had been no similar payments, or anything larger than £22,000 being paid in one transaction within 12 months (which is what I consider to be a fair and reasonable timeframe in order to consider what would be considered as 'usual' account activity). So, given the payment of 3 March 2020 falls outside of this timeframe, I don't consider it would be fair to take it into account for the purposes of considering whether £35,311.37 was out of character for Mr and Mrs P.

In any event, aside from the unusually large value this payment represented, there was also the fact that payments being made to the same crypto provider (Luno) were becoming larger and larger. Escalating payments to the same payee can often be indicative of someone falling victim to a scam. So, when it got to the point of another increase in spending to the crypto merchant – for an amount that was also out of character for the account – I'm satisfied there were then enough risk factors to trigger an intervention by NatWest. So, I think the bank ought to have intervened and questioned Mr and Mrs P about this payment.

If NatWest had carried out reasonable due diligence by contacting Mr and Mrs P and asking suitably probing questions, there is no reason to suggest they wouldn't have been forthcoming about what they were doing. If it had given a warning, I believe that Mr and Mrs P would have made further enquiries into the merchant, including looking into whether or not they were regulated in the UK or abroad.

Mr and Mrs P would have discovered that they were not, as there was an FCA warning published about S by the time they made the suspicious payment on 26 April 2021. They could have also discovered the other various warnings about the broker posted on review websites where others had stated the investment was a scam.

Given Mr and Mrs P had listened when their son warned them they were being scammed, I have no reason to doubt they wouldn't have listened to any warning given by their trusted bank. In other words, I am satisfied that a warning from NatWest would probably have exposed S's false pretences, thereby preventing further losses. As a result, I intend directing NatWest to refund the payments Mr and Mrs P lost to the scam from 26 April 2021 onwards.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Mr and Mrs P should bear some responsibility by way of contributory negligence, which I'm satisfied they should in this case.

First, I don't consider Mr and Mrs P carried out sufficient due diligence to ensure that the broker was genuine, as it doesn't appear that they consulted any independent sources. I note from their previous transactions that they had also invested before. So, being experienced investors, I think it's reasonable to expect a certain level of research and due diligence to have been completed before they decided to part with their money. If they had carried out such research, they would have likely come across the various warnings and reviews from others who had been scammed by S at the time. They could have also discovered that the broker was not regulated by the FCA and would have therefore been much less likely to invest their money.

Mr and Mrs P also said they were seeing returns of around £200,000 within just two months, which eventually rose to an accumulated profit of £1.5million. Such returns ought to have appeared far too good to be true, particularly to experienced investors, as rarely will any legitimate investment platform be able to achieve this in such a short space of time.

Therefore, I'm satisfied that Mr and Mrs P's lack of due diligence and failure to question what they were being promised contributed to their loss, such that they should share responsibility with NatWest, and I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

Recovery

I've also thought about whether NatWest could have done more to attempt to recover the faster payments after Mr and Mrs P reported the fraud. However, we know that the money was quickly moved out of their Luno account to the scammer after it had been transferred, so I'm not persuaded there was anything further NatWest could have done to recover the funds in these circumstances.

I invited further comments and evidence from both parties. Natwest accepted my provisional findings and agreed to pay redress as directed. It said it would be deducting a credit for £13,885.67 that Mr and Mrs P received from Luno on 4 June 2021. It also asked for clarification on whether a £15,710 payment Mr and Mrs P received from Coinbase in July 2021 was related to the scam or not.

Mr and Mrs P disagreed with my provisional decision. They submit that NatWest should have intervened earlier on in the scam and didn't think it was fair that they were being held liable for 50% of their losses. Mr and Mrs P clarified that any payment received from Coinbase would not have been linked to the scam.

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've also carefully considered Mr and Mrs P's submissions in response to my provisional findings. But having done so, It hasn't changed the conclusions I've outlined above.

Mr and Mrs P said they do not understand why their past transactions are relevant. Simply put, NatWest would only be expected to fairly and reasonably intervene on payments that

appear out of character, unusual or suspicious. And the only way the bank can reasonably make that determination is by considering transactions in light of what is to be considered as 'normal' for the account in question.

This is why it's important to consider the scam transactions in light of Mr and Mrs P's previous account history, to see what can reasonably be considered as out of character. And for the reasons set out in my provisional decision, I'm still of the opinion that the transactions prior to the £35,311.37 on 26 April 2021 would not have appeared overly unusual, meaning there would have been no expectation on NatWest to intervene any earlier than this point.

Mr and Mrs P are also unhappy that they are being held jointly liable with NatWest for their loss as a result of their own contributory negligence. I understand this will come as a disappointment to them, but it's important to reach an outcome that is fair and reasonable to *both* parties in this complaint. I outlined the reasons why I felt it would be fair for Mr and Mrs P to share liability in this case, and they haven't provided any further comments or evidence that would change my conclusions in this regard.

Finally, NatWest asked for clarification on certain credits received into Mr and Mrs P's account. In terms of the credit of £13,885.67 received from Luno, Mr and Mrs P have not disputed that this was linked to the scam, so I consider it would be fair and reasonable for NatWest to deduct this from the overall loss it is repaying.

However, Mr and Mrs P have said that the £15,710 payment received from Coinbase is not linked to the scam. I've also not seen any evidence to suggest that it is linked. And given it was received after the scam was revealed in June 2021 and came from a crypto account that was not used as part of the scam, I'm not satisfied it would be fair for NatWest to deduct this from their overall compensation either, as it has not shown it was likely received from funds paid out as part of the scam.

My final decision

For the reasons given above, I uphold this complaint and direct National Westminster Bank Plc to:

- Refund the payments Mr and Mrs P made as part of the scam, from the £35,311.37 payment made on 26 April 2021 onwards, less any credits received from the scammer, less a deduction of 50% in recognition of Mr and Mrs P's own contributory negligence towards their loss.
- Pay 8% simple interest per year on this amount from the date of loss until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 20 November 2023.

Jack Ferris
Ombudsman