

The complaint

Mr and Mrs G have complained that National Westminster Bank Plc (“NatWest”) have failed to refund the money Mr G lost as part of an investment scam.

Mr G has been the main driver of this complaint and seems to be the person that interacted with the scammer, so I will mostly refer to him going forward, even though the current account affected was a joint account.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, Mr G saw an advert in which it appeared that a well know celebrity endorsed a trading company that I will call B. Mr G then made a number of faster payments to crypto exchanges and also to a bank account in a third party’s name, totalling over £43,000 between June 2022 and January 2023. My understanding is that the funds sent to the crypto exchange were converted to crypto and then sent on to B.

Mr G asked NatWest to refund these payments as he believes NatWest should have done more to prevent him from being scammed. NatWest did not agree with this. NatWest did though refund the transactions made to the third parties bank account, as these fell under the scope of the Contingent Reimbursement Model (CRM”).

One of our investigators looked into this matter and she thought that NatWest had not intervened appropriately during a phone call it had with Mr G in June 2022. This call occurred when Mr G was sending funds to a different account he held. She thought that during this call an appropriate warning should have been given by NatWest, but she thought that had a warning been provided, Mr G would likely still have sent the funds to B. She said this because she listened to a different call between Mr G and another firm which Mr G held an account with. During this call, Mr G was given a scam warning and Mr G carried on sending funds to B. So she did not uphold this complaint.

Mr G did not agree with this and therefore his complaint has been passed to me to issue a 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons.

It isn't in dispute that Mr G authorised the disputed payments he made from his NatWest account. The payments were requested by him using his legitimate security credentials provided by NatWest, and the starting position is that NatWest 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 G 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.

Mr G has cited the Banking Protocol and UK Finance's toolkit. He has also cited BSI:PAS 17271:2017 and the Quincecare judgment. We are aware of this court case and of the code of practice and we consider this when reaching our outcomes and decisions. So I have borne these in mind when deciding whether NatWest ought to have done anything more.

In this instance, the payments Mr G was making before the call on 29 June 2022 between Mr G and NatWest, were not indicative that Mr G was being scammed. I say this because their size, compared with payments usually made on the account, and the pattern of the payments were not particularly unusual for Mr G's account. So I don't think that NatWest was being unfair or unreasonable by not intervening prior to that point. But when it did intervene during this call, I do think further questions should have been asked and a scam warning given.

Given this, I need to consider whether a more appropriate intervention would have stopped the scam. To do this I have considered the call between the other firm and Mr G. I think it is fair to consider what was discussed in the other call as it gives a good insight into how Mr G would've likely reacted had NatWest gone further and warned Mr G about the payments potentially being part of a scam.

In the call with the other firm, Mr G was told that B was not regulated; that scammers often lure consumers in by allowing small withdrawals; that there were a number of red flags concerning the way B operated that made it sound like a scam; that he should not pay them any more money in order to withdraw funds; and that legitimate firms do not operate via social media or via messaging services. Mr G was also told by the other firm that it would not permit his payments that were going via a crypto exchange to B.

Unfortunately, Mr G chose to ignore the warnings and made the payments from his NatWest account to circumvent the blocks the other firm had put in place to try and protect him.

I note that Mr G was not told that B were definitely a scam. But without an official warning from the FCA or other body, the other firm could only highlight why B appeared to have the hallmarks of a scam.

Had NatWest intervened more during the call on 29 June 2022 and indeed after that call, I think that the same would have happened. It should have provided a warning about B similar to what the other firm did, but would have been unable to say B were definitely scammers. Given this, and how Mr G reacted to the scam warnings the other firm gave him, I think that it is likely that Mr G would have carried on regardless of any warning from NatWest.

So overall, I think that NatWest should have intervened more than it did, but I don't think an intervention would have prevented the scam.

I've also thought about whether NatWest could have done more to recover the funds sent to the crypto exchange after Mr G reported the fraud. NatWest are under no obligation to refund the money made to the crypto exchanges to Mr G under the Contingent Reimbursement Model (CRM) Code. This is because the Code does not apply to transfers which the payer has effectively made to themselves i.e. into an account in their own name. My understanding is that the payments made to the third parties bank account have already been refunded. I don't think that NatWest needs to do anything more than it has already done.

I appreciate this will likely come as a disappointment to Mr and Mrs G, and I'm sorry to hear they have been the victim of a cruel scam. However, I'm not persuaded that NatWest can fairly or reasonably be held liable for this loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 28 May 2024.

Charlie Newton
Ombudsman