

## The complaint

Ms B complains that National Westminster Bank Plc ('NatWest') won't refund the money she lost after falling victim to a scam.

## What happened

In 2021, Ms B found an investment opportunity being promoted on a social media app. Ms B says she was interested in a way to make more money after a recent change in her personal circumstances. The person promoting the investment shared information about the profits they had made using a trading platform. I'll refer to this trading platform as O.

Ms B was told she would be helped with which trades to make and the person helping her would take a share of the profit she earned. Ms B would retain 90% of the profit, and the other person would get 10%. Ms B was told she could expect an investment of \$500 to grow to \$5,400, whereas an investment of \$5,000 would increase to \$52,800 and that profits were weekly and there was a 100% guarantee.

In order to complete trades on O's platform, Ms B had to purchase cryptocurrency and send it to her account with O.

Ms B made the following payments, all of which were used to purchase cryptocurrency which Ms B sent onto her account with O.

Date	Pmt	Details of transaction	Amount
14.9.2021	1	Payment to M – purchase cryptocurrency	£525.54
15.9.2021	2	Payment to M – purchase cryptocurrency (international payment)	£8,860.87
17.9.2021	3	Payment to M – purchase cryptocurrency	£525.39
20.9.2021	4	Payment to M – purchase cryptocurrency	£315.14
20.9.2021	5	Payment to M – purchase cryptocurrency	£505.18

When Ms B tried to make a withdrawal from her account with O, she was asked to deposit a further \$11,000. When she was unable to withdraw her funds without further investment, Ms B realised she had been the victim of a scam.

Ms B says she didn't raise a fraud claim with NatWest until 2023, because she wasn't aware that she could be entitled to a refund through her bank.

NatWest considered Ms B's fraud claim but declined to refund her. NatWest told Ms B that they had an obligation to follow her payment instructions. As Ms B wasn't happy with their response, she brought a complaint to our service.

While the complaint was with our service, NatWest changed their position, offering to refund 50% of the funds Ms B lost – which came to £5,103.36. NatWest say Ms B should share liability for her loss as she didn't do enough checks to ensure the legitimacy of the investment.

An investigator looked into Ms B's complaint but didn't uphold it, saying that NatWest's offer was fair. The investigator agreed that Ms B should share liability for her loss with NatWest.

Ms B wasn't happy with the investigator's opinion and asked for an ombudsman to review her case. Ms B referenced a decision issued on another case where there wasn't a 50% deduction applied to the refund, saying there shouldn't be a deduction on her case.

When Ms B originally raised her complaint with NatWest and our service, she didn't include payment three. So, this wasn't included in the refund calculation that NatWest made and wasn't addressed by the investigator who looked into her complaint.

Having reviewed the case, I reached a different outcome than the investigator. So, I wanted to explain my reasoning and give all parties a chance to provide any further evidence before I issued a final decision. So, I issued a provisional decision on 1 July 2024.

### **My provisional decision**

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While Ms B didn't raise payment three as part of her initial complaint, based on the payee details and date of the payment, I'm satisfied that this payment was made as part of the scam. Therefore, I'll consider it as part of her complaint.

NatWest are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this, in all but a limited number of circumstances.

However, the CRM Code doesn't apply to payments made for legitimate purposes. In this case, Ms B purchased cryptocurrency through M, which she transferred into her account with O. The cryptocurrency purchase was a legitimate transaction, although I accept that ultimately Ms B experienced a loss. But, in these circumstances, I can't consider Ms B's case under the CRM Code.

In broad terms, the starting position in law is that NatWest are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations 2017 (PSR's).

But, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider NatWest should fairly and reasonably have been monitoring accounts and any payments made or received to counter various, including preventing fraud and scams.

Also, I'd expect NatWest to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

The first payment that Ms B made was for just over £500. Having reviewed Ms B's previous account activity, I'm not satisfied that this payment is so unusual or out of character that I would've expected NatWest to have identified a potential scam or intervened. On that basis, I wouldn't have recommended that NatWest refund payment one – although they have already refunded 50% on that payment.

However, when Ms B made the second payment for £8,860.87, NatWest have accepted that the payment was unusual and out of character and say the payment should've flagged for additional checks. Considering the specifics of the payment, including the value of the payment, that it was going to a known cryptocurrency exchange and it being an international payment, I would've expected NatWest to have contacted Ms B and asked open probing questions about the payment.

Based on the information that I think Ms B would've provided in relation to those questions, I think it's more likely than not that NatWest would've uncovered the scam and prevented her from making any further payments. I say this because Ms B found the investment on a social media app, was promised unrealistic rates of returns and was told that her profit was guaranteed - which isn't true with trading. All of these details are common to cryptocurrency investment scams, which NatWest would've been aware of. So, I think NatWest should refund Mrs B from payment two onwards.

However, I also have to consider whether it's fair for Ms B to share liability for her loss.

Ms B has told us that she was vulnerable at the time she made the payments, due to an unexpected change in her personal circumstances which meant it was important that she find an additional way to earn income. However, I'm not satisfied that this vulnerability is sufficient to say that Ms B acted reasonably in not completing any checks before making these payments. I say this taking into account the limited information that she was given about the investment, and the exceptionally high rate of returns that she was promised.

I think a reasonable person would've been concerned if they were told that within one week they could turn \$5,000 into over \$50,000. Also, I can't see that Ms B knew anything about O, or the person that she was taking investment advice from. I also think Ms B should've been concerned about an investment of this kind being offered on a social media app. I can't see that Ms B did any checks to satisfy herself of the legitimacy of the investment or the person recommending the investment, which I don't think is reasonable in these circumstances. On that basis, I think it's fair for Ms B to share liability for her loss and would recommend that NatWest reduce the refund by 50% from payment two onwards.

Ms B has referenced a decision on another case, saying her refund shouldn't be reduced for shared liability. However, each case is considered on its own individual merits including the circumstances specific to the complainant, the scam involved, the payments they made and the information available to them at the time of making the payments. And I've carefully considered all of the circumstances surrounding Ms B's complaint in reaching my decision.

I'm sorry to hear about Ms B's vulnerability at the time she made the payments and can understand that it may've clouded her judgement in making these payments. But I think the returns that she was promised were so unrealistic, that a reasonable person in her circumstances would've been concerned and taken steps to check the legitimacy of what they were being told.

My provisional was that I intended to ask NatWest to refund 50% from payment two onwards, this included payment three, which wasn't included in NatWest's calculation. Also, as Ms B has been without the use of the funds, to ask NatWest to pay 8% simple interest on that refund. This interest to be calculated from the date Ms B made the payments until the date of settlement.

However, NatWest can deduct from this refund the amount they've already paid to Ms B of £5,103.36.

If the redress I recommended comes to less than the refund NatWest have already paid (which I don't think it does when taking into account the interest award), then NatWest will not be required to make any further refund to Ms B. But NatWest should provide a calculation to share with Ms B that shows how they reached this answer.

### **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.

NatWest responded and accepted my provisional decision. They confirmed they have already refunded Ms B £5,103.36 (being 50% of all the payments Ms B made), whereas 50% of payments two to five would amount to £5,103.29 – so no further refund is required in relation to the payments Ms B made. However, NatWest needs to calculate and pay interest on the refund at 8% simple interest. NatWest confirmed that this will be done once the final decision has been issued.

Ms B didn't agree with the provisional decision. She raised a concern that the provisional decision said her complaint is being upheld, but she is only being refunded 50% of the transactions. Ms B also highlighted the decision she previously shared with us, where the complainant received a refund of 100% of their payments. Ms B feels it is unfair for her not to be refunded 100% of her payments.

I'm sorry for any confusion caused to Ms B. The investigator who viewed her complaint, didn't uphold it saying that the refund NatWest had already paid was fair. As I was making an additional recommendation, of interest to be paid on the refund, it changed the outcome on the case to being an uphold – although I appreciate I wasn't recommending a full refund as Ms B wants.

Ms B has referred to a decision where another consumer was refunded 100% of their loss following a complaint to this service. However, as I explained in my provisional decision, each case is considered on its individual merits and just because another complainant got back 100% of the funds they lost as the result of a scam – doesn't mean that Ms B is entitled to a 100% refund.

Having carefully considered all of the points raised, I'm not persuaded to reach a different outcome than I did in my provisional decision.

### *In summary*

NatWest has already accepted that the second payment Ms B made was so unusual and out of character for her account that it warranted intervention – which I agree with. I think had NatWest asked open probing questions it's more likely than not the scam would've been uncovered, and Ms B wouldn't have made any further payments. On that basis, NatWest should refund 50% of payments two to five (inclusive).

However, I also have to consider whether Ms B should share responsibility for her loss due to her lack of care in the situation, and whether that lack of care goes beyond what I'd expect of a reasonable person.

In this case, the returns that Ms B was promised were so high, I think she should've doubted what she was being told right from the outset. Ms B was told that within a week she could turn \$500 into \$5,000 and took everything she was told at face value, completing no checks on the person giving her investment advice or the company that was being used for the trades. I think a reasonable person would've been concerned about the returns they were

being promised and completed some checks on the legitimacy of the investment – which Ms B didn't do. That is why I think it's fair for her to share liability for her loss with NatWest and why I have reduced her refund by 50%.

NatWest should now calculate the interest that Ms B is entitled to on her refund and arrange for that to be paid to her.

### **Putting things right**

To put things right I require National Westminster Bank Plc to:

- Refund 50% of payments two to five (inclusive).
- Pay simple interest on that refund of 8% per year, calculated from the date of the payments until the date of settlement.
- NatWest can deduct the £5,103.36 that they've already paid to Ms B

\*If NatWest considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms B how much it's taken off. It should also give Ms B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint against National Westminster Bank Plc and require them to compensate Ms B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 19 August 2024.

Lisa Lowe  
**Ombudsman**