

The complaint

Mr and Mrs S hold/held a joint account with National Westminster Bank Public Limited Company ("NatWest").

Mr and Mrs S's complaint is about NatWest's refusal to reimburse them money they say they lost due to a scam.

Mr and Mrs S are represented by Mendelsons Solicitors in this matter. However, where appropriate, I will refer to Mr and Mrs S solely in this decision for ease of reading.

What happened

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview of events.

Mr and Mrs S say they have fallen victim to cryptocurrency related investment scam. They say they were deceived by fraudsters into making payments towards what they thought was a legitimate investment with a company called, Cash FX. The payments in question were all fund transfers and made to SwissBorg (Openpayd Financial Services Malta):

Payment Number	Date	Amount
1	29 September 2021	£850
2	2 October 2021	£6,720

Mr and Mrs S disputed the above with NatWest. When NatWest refused to reimburse Mr and Mrs S, they raised a complaint, which they also referred to our service.

One of our investigators considered the complaint and did not uphold it. As Mr and Mrs S did not accept the investigator's findings, this matter has been passed to me to make a decision.

It should be noted that Mr and Mrs S also made payments towards the scam from a joint account they hold/held with Santander. They have raised a separate complaint about this.

What I have 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 find that the investigator at first instance was right to reach the conclusion they did. This is for reasons I set out in this decision.

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Contingent Reimbursement Model (CRM) code

It appears that the funds concerned from Mr and Mrs S's NatWest account went to a SwissBorg account in their names. And then, as Mr and Mrs S say, the converted cryptocurrency was sent to the fraudsters.

For these reasons, the CRM code does not apply in this matter.

Regulatory framework

The regulations which apply in this matter are the Payment Services Regulations 2017 ("the PSRs").

Should NatWest have recognised that Mr and Mrs S were at risk of financial harm from fraud?

It is not in dispute that Mr and Mrs S authorised the payment transactions in this matter. Generally, consumers are liable for payment transactions they have authorised. However, that is not the end of the story. This is because even if a payment is authorised, there are regulatory requirements and good industry practice which suggest firms – such as NatWest – should be on the look-out for unusual and out of character transactions to protect their customers from financial harm. And, if such payment transactions do arise, firms should intervene before processing them. That said, firms need to strike a balance between intervening in a customer's payment to protect them from financial harm, against the risk of unnecessarily inconveniencing or delaying a customer's legitimate transactions.

I have borne the above in mind when considering the payment transactions in this matter.

Payment 1

I am not persuaded that Payment 1 was unusual or out of character. I acknowledge that it was cryptocurrency related in nature. However, I have weighed this against the fact that it was relatively low in value, and that the transaction was not significantly out of line with normal spending on the account concerned. Here are some examples of prior spending on the account: £505.95 (26 May 2021); £347.67 (7 May 2021); £685.97 (30 April 2021); £470 (11 April 2021); £1100.91 (11 April 2024); £1,000 (10 April 2021).

For these reasons, I would not have expected Payment 1 to have triggered NatWest's fraud detection systems.

Payment 2

I am persuaded that Payment 2 was unusual and out of character. I say this primarily because this transaction was quite high in value and cryptocurrency in nature. Given this, I think there was an identifiable risk. Therefore, Payment 2 should have triggered NatWest's fraud detection systems; prompting it to intervene before releasing the transaction to try to protect Mr and Mrs S from financial harm.

I am mindful of the fact that Payment 2 was made in 2021. I have taken this together with the aggravating factors present. In doing so, my view is that a proportionate intervention to the risk identified would have been for NatWest to provide Mr and Mrs S with a written warning that broadly covered scam risks.

The investigator thought that Payment 2 should not have triggered NatWest's systems, as SwissBorg had become an established payee on the account. This may well be an accurate assessment. In any event however, I do agree with the investigator that ultimately, this complaint should not be upheld. I give my reasons below.

If NatWest had provided a written warning of the type described, would that have prevented the losses Mr and Mrs S suffered from Payment 2?

As I have taken the view that Payment 2 should have triggered an intervention by NatWest, I must now turn to causation. Put simply, I need to consider whether NatWest's failure to intervene caused Mr and Mrs S's losses. To do this, I need to reflect on whether such an intervention would have likely made any difference. Having done so, I am not persuaded that it would have. I take the view that, on the balance of probabilities, Mr and Mrs S would have frustrated NatWest's attempt to intervene to protect them from financial harm – thereby alleviating any concerns NatWest had.

I have reached this view for the following reasons.

New payee warning

NatWest says that Mr and Mrs S would have been asked to select a payment reason when they set up SwissBorg as a new payee – this does not appear to be disputed by them. Subject to what reason Mr and Mrs S selected, they would have seen one of the following warnings which they would have had to acknowledge to continue with Payment 1:

- **If 'Making an investment' was selected:**
 - *"Does this investment offer returns that seem too good to be true? STOP – it's likely to be a scam. Beware of investment opportunities that offer high return with little or no risk, this could be a scam."*
- **If 'Investing in cryptocurrency (e.g. Bitcoin)' was selected:**
 - *"WARNING: Thinking of investing in BitCoin or other Cryptocurrencies? Scammers will often contact you offering to help you invest in cryptocurrency (e.g. Bitcoin) and will offer to guide you through opening a cryptocurrency account. If you cannot access the cryptocurrency wallet or you cannot withdraw money from it, this is a scam and you should stop making payments immediately."*

Further, both warnings would have suggested that Mr and Mrs S check the company they were dealing with against the Financial Conduct Authority's website.

I acknowledge that none of these new payee warnings would have been presented again for Payment 2. However, I do find that both warnings amounted to – or came very close to – the written warning I would have expected NatWest to provide for Payment 2 (described above). Therefore, it would be remiss of me if I did not take into account Mr and Mrs S's response to whichever new payee warning they would have seen. The fact Mr and Mrs S did not heed whichever warning they saw is telling – and has assisted me in deciding what they would have likely done had they been provided with a written warning for Payment 2.

WhatsApp messages

I have seen WhatsApp messages from a group chat – members of which appear to be investors of the scam (including Mrs S). Here is the date range of the messages: July 2020 to November 2024. The earliest WhatsApp message I can see from Mrs S is on 12 October 2021 (so after Payment 2 was made). I have considered Mrs S's messages in this group chat to give me some insight into her state of mind at the time – particularly when considering how she and/or Mr S would have likely responded to a written warning when Payment 2 was made.

From what I can ascertain from the messages, it appears that the group members only started to realise they had been scammed in about late 2023. Up until that point, Mrs S appears to still believe everything was above board. For example, during the period mentioned, Mrs S discusses in the group chat, amongst other things, meetings, trades and expresses her excitement about the scam. I found these two messages from Mrs S particularly striking: *"Can't wait to get stuck into this, we have barely touched the surface my kids are really getting geed up xx"* (26 October 2021); and *"Dave can you introduce a 17 year old ??"* (3 November 2021).

To my mind, the above shows that Mrs S was still very much under the fraudsters' spell even after Payment 2. This proposition is supported by the fact that she made further payments towards the scam from her Santander joint account in 2022.

In summary

In my judgment, when taking the above points together, they suggest that had NatWest intervened in Payment 2 to try to protect Mr and Mrs S from financial harm (in the way described above): it is likely they would have frustrated this intervention – thereby alleviating any concerns NatWest had.

Recovery of funds

Mr and Mrs S made their last payment from their NatWest account to the scam in October 2021. The scam was reported to NatWest in 2024.

The likelihood that even if prompt action had been taken by NatWest on or immediately after when the scam was reported, any of the money transferred would have been successfully reclaimed, seems slim. I say this because of the time that had elapsed between the last payment and when the scam was reported. In these types of scams, fraudsters tend to withdraw/transfer out their ill-gotten gains immediately to prevent recovery.

Further or alternatively, as the payments were made to purchase cryptocurrency – which would have been forwarded on in this form – there would not have been any funds to recover.

So, I am satisfied that it is unlikely NatWest could have done anything to recover Mr and Mrs S's funds.

Compensation for distress and/or inconvenience

I have considered whether an award for distress and/or inconvenience is warranted in this matter. Having done so, I am not persuaded that it is. I have not found any errors in NatWest's investigation. Any distress and/or inconvenience Mr and Mrs S has suffered is a result of the fraudsters' actions – not NatWest's.

Conclusion

Taking all the above points together, I do not find that NatWest has done anything wrong in the circumstances of this complaint. Therefore, I will not be directing NatWest to do anything further.

My final decision

For the reasons set out above, my final decision is that I do not uphold this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 18 April 2025.

Tony Massiah
Ombudsman