

The complaint

Mr F complains that National Westminster Bank Plc (NatWest) failed to protect him from being the victim of fraud.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

Mr F has explained that last summer he found information about investing in cryptocurrencies online. When Mr F followed a link, he was taken to a website that gave information about the level of returns he could expect if he invested via a trading platform. Mr F says the information provided was professional and included details of celebrities who'd invested and made significant profits. Mr F has explained he was contacted by an account manager and persuaded to open an account with a business I'll call C that allows consumers to purchase Bitcoin. Mr F says that what appeared to be a trading platform was also set up for him.

Mr F set up an account with C and on 22 August 2022 instructed a payment online for £1,000. NatWest's systems picked up the payment as being unusual and it was held for further checks.

Mr F spoke with NatWest and gave some basic information about the proposed payment. Mr F confirmed he'd instructed the payment to an account in his name with C with the intention of investing in cryptocurrencies. NatWest asked Mr F some questions surrounding why he'd opened an account with C and the investment he intended to make. Mr F said he'd done some research online and decided to open an account with C. Mr F was asked to provide some identification and associated evidence of his account with C which he did a short time later.

Mr F called NatWest back and spoke with another agent. During the call, Mr F's documents were checked and signed off. The agent asked Mr F some questions concerning the investment he intended to make. The agent provided a fraud warning and said NatWest was aware of an increased level of cryptocurrency related scams and that Mr F should be careful and make sure investments were of his own doing. The agent added that Mr F's account appeared fine and when Mr F confirmed he wanted to proceed, authorised the payment of £1,000 to C.

Once the funds were received in his account with C, Mr F's explained that fraudsters took control of his computer and transferred them to a crypto wallet. Mr F thought the wallet belonged to him and has explained that his trading account he appeared to have updated with the fraudsters quickly showing it had received the Bitcoin transferred.

Mr F was persuaded to make further payments of £3,000 on 28 August 2022, £1,350 on 14 October 2022 and £2,500 on 28 October 2022. In total Mr F transferred £7,850 thinking he was making genuine investments in cryptocurrency.

Mr F has explained that a short time later he asked the account manager to withdraw the funds and was sent various emails confirming that was possible. But after several failed requests, Mr F's funds weren't sent to him and he realised he'd fallen victim to scammers.

On 4 November 2022 Mr F reported his concerns to NatWest and asked it for help recovering his money. But when NatWest looked at Mr F's claim it declined to issue a refund and said he'd sent the funds to an account in his own name. Mr F went on to raise a complaint with NatWest and it issued a final response. NatWest said it was unable to raise a scam claim as Mr F had sent money to his own account with C. NatWest added it had stopped Mr F's first payment on 22 August 2022 for further checks which he completed. NatWest said the following payments Mr F made were assessed on a risk basis but not identified as being suspicious so weren't stopped.

An investigator at this service looked at Mr F's complaint. They thought NatWest had taken reasonable steps when stopping the first payment Mr F tried to make. The investigator didn't think NatWest had acted unfairly by approving the subsequent payments Mr F made and didn't ask it to take any further action. Mr F asked to appeal and said NatWest had failed to follow industry guidelines, regulation and legislation designed to protect consumers from fraud. Mr F added that he'd complied with NatWest's request for documents and trusted it to carry out safeguarding checks to ensure it protected his interests. Mr F said that whilst some warnings had been provided, they were generic in nature and not specific to his circumstances or the payments he was making. As Mr F asked to appeal, his complaint has been passed to me to make a decision.

What I've provisionally 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'm aware I've summarised the events surrounding this complaint in less detail than the parties involved. No discourtesy is intended by my approach which reflects the informal nature of this service. I want to assure all parties I've read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. My approach is in line with the rules we operate under.

All parties agree that Mr F authorised the payments to his account with C from his NatWest account. Mr F made the payments using his online banking and mobile banking facilities. Even though Mr F was the victim of a scam, he didn't intend the payments to go to a fraudster. The payments were "authorised" under the Payment Services Regulations. That means NatWest had an obligation to follow Mr F's payment instructions and he is presumed liable in the first instance. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider NatWest should have:

- *been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering and the financing of terrorism*
- *had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer*

- *in some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to protect its customer from the possibility of fraud*

NatWest has argued the payments Mr F made were transferred to his own account with C then converted to Bitcoin and transferred, so the loss didn't occur from its account. But cryptocurrency scams often involve money passing through more than one account and they were not uncommon during this time. I think NatWest would've been aware of this. The FCA and Action Fraud published warnings about cryptocurrency scams in 2018. By the summer of 2022, when Mr F instructed the disputed payments, I think NatWest ought to have had time to digest these warnings and put mechanisms in place to help detect and prevent this type of fraud. So, although Mr F's losses have not arisen from the initial transfers, I'm satisfied they ought to have been within the scope of NatWest's understanding of this type of scam and foreseeable to it. And I'm satisfied NatWest can be held responsible for the loss if it could have prevented the scam by asking Mr F some further questions.

NatWest picked up the first payment Mr F made to C on 22 August 2022 and contacted him. Mr F went on to speak with two agents at NatWest before the payment was approved. During the calls with Mr F, he was asked about the circumstances under which he'd decided to make the payment and what the purpose was. Mr F was open and upfront, explaining that he'd found information online and decided to invest in cryptocurrencies. Whilst I appreciate the agents Mr F spoke with provided some generic information and warnings about scams, I haven't been persuaded they went far enough. I'll explain why.

During the first call, the agent checked whether Mr F had set up his account with C personally. Mr F added that he'd recently opened a digital wallet to receive the cryptocurrency he was hoping to purchase for investment purposes. The agent went on to ask Mr F to supply evidence of his identity and the account he holds with C. But given Mr F has specifically confirmed he was intending to invest in cryptocurrency, I'd have expected NatWest's agent to have asked more detailed and probing questions to help identify whether the investment was genuine.

Mr F called NatWest back once he sent his documents. During the second call, the agent did raise some questions with Mr F. But I felt the questions were generic in nature and lacked any real information that Mr F could've used to help him identify whether he was a victim of scammers. The agent Mr F spoke with said he should be careful, that his investments should be of his own doing and that third parties are known to be committing fraudulent activity. But there was no specific guidance provided and very little time spent providing warnings. Having listened to the call, I also note the agent used phrases like "to be honest, your account looks fine as far as I can see..." and "just for your information, I'm sure you already know..." which in my view made light of the potential for fraud.

Given the industry guidance issued by the FCA and Action Fraud, I'd have expected detailed and targeted questions to have been put to Mr F that could've helped him identify the situation as fraud. I'm not persuaded it was reasonable to assume Mr F would've already known about the risks as this was the first time he'd tried to invest in this way. Had NatWest asked probing questions I think it would've most likely identified some typical features of cryptocurrency scams so could've provided meaningful advice to Mr F. On balance, I think an intervention of that nature would most likely have made the difference and caused Mr F to either carry out additional research or decline to proceed altogether.

If NatWest had gone further, as I think it should have, my view is that it would most likely have been clear to the bank and Mr F that there was a risk of financial harm and the scam would've unfolded without any payments being made. In addition, NatWest could've declined

to make the payments altogether based on the information it received if Mr F still wanted to go ahead despite its warnings. And, given the circumstances of Mr F's case, I think it would've been reasonable to do so.

I accept NatWest has to find a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or dealing with legitimate payment requests. I wouldn't expect NatWest to have interrogated Mr F. I also understand that the main perpetrator here is the fraudster. But overall, I think appropriate and probing questions should reasonably have been asked. And I'm satisfied that if they had been Mr F wouldn't have wanted to go ahead or, if he did, NatWest would've declined to make the payments. In either scenario, I think the scam would've been prevented and Mr F wouldn't have lost £7,850 to the fraudsters.

I think it's fair to add that after the first payment was approved, no further transfers were held by NatWest for additional checks. My view is that NatWest missed an important opportunity to ask probing questions to Mr F on 22 August 2022. Had it done so, I'm satisfied it's more likely than not that none of Mr F's payments to the scammers would've been made. So I intend to tell NatWest to refund all four payments Mr F made to C.

I invited both parties to respond with any additional comments or information they wanted me to consider before I made my final decision. Both Mr F and NatWest confirmed they were willing to proceed in line with my provisional 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.

As both parties have confirmed they're willing to proceed and no new information has been provided I see no reason to change the conclusions I reached in my provisional decision. I still think Mr F's case should be upheld, for the same reasons.

My final decision

My decision is that I uphold Mr F's complaint and direct National Westminster Bank Plc to settle by refunding payments totalling £7,850 plus interest of 8% from the date of each payment to the date of settlement. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 November 2023.

Marco Manente
Ombudsman