

## **The complaint**

Mr T complains that National Westminster Bank Plc (“NatWest”) refuses to refund his losses after he fell victim to a scam.

## **What happened**

Mr T has explained that around early July 2022, he saw an advert on social media and registered his details. He was subsequently called by a financial advisor, and he was persuaded to make a number of payments from his NatWest account for what he subsequently realised was a cryptocurrency investment scam.

Some of the payments were sent initially to an account with another UK regulated business (which I’ll call W). The payments were then sent on to an account in his own name with a cryptocurrency exchange (which I’ll call N), then sent on to the scammer. Some payments were sent directly from NatWest to N. N was a legitimate business and there is no suggestion it was involved in the scam. Mr T also mentioned he paid an initial deposit on his credit card.

Mr T also applied for and took out a loan with NatWest to send further funds to the scammer. The scammer assured him that he didn’t need to worry about repaying the loan given the returns he would receive from the scam. When Mr T was asked to take out a further loan to send to the scammers, despite not having had any funds returned to him, Mr T realised he’d been scammed. My understanding is that he hasn’t been able to retrieve the money lost to the scammers.

Mr T subsequently reported the scam to NatWest and asked for the money he lost to be reimbursed. NatWest said it had flagged several transactions as suspicious and spoke to Mr T, asking him questions with a view to ascertaining whether he was at risk of being scammed – at one point asking him to visit branch to verify his story. Mr T was dishonest and misled NatWest, so it wasn’t able to discover the scam. So, NatWest refused to reimburse Mr T for his losses.

Unhappy with this, Mr T referred a complaint about NatWest to the Financial Ombudsman Service. Our investigator looked at what happened. She largely agreed that NatWest had carried out appropriate interventions and wasn’t able to discover the scam during its earlier intervention calls. However, she felt the final intervention (on 14 July 2022) was inadequate.

Mr T had on an earlier call told NatWest that he was sending funds to his account with W for home improvements. When this was returned by W, Mr T tried to transfer these same amounts to N directly. NatWest again called Mr T, but despite Mr T being dishonest on the call, our investigator felt NatWest ought to have realised that Mr T was being dishonest. The same funds that Mr T had told NatWest was for home improvements were now being sent to N. Our investigator felt that, as the expert, NatWest ought to have been aware that consumers are often coached to lie to their bank by scammers. NatWest should therefore have probed further given the clear discrepancy in Mr T’s testimony. Had it done so, it could have warned Mr T, that scammers telling their victims to lie to their bank was a common theme of investment scams and no legitimate business would tell its customers to lie to their

bank. It therefore would have discovered the scam and stopped the payment as well as those that followed.

Our investigator felt that NatWest should therefore refund the payments made to the scammer from 14 July 2022 onwards. However, she also felt that Mr T should be responsible for some of the loss in this case. She explained that Mr T had repeatedly lied to NatWest and had sent significant funds to a party he did not know without seeking any advice. So, she said the redress should be reduced by 50%. She added that NatWest should also refund any interest charged on the loan amount being refunded, and that the refunds could be offset against the loan. She further clarified NatWest should also refund any overpayments Mr T made towards the loan and pay 8% interest on the refund amount.

NatWest agreed with our investigators view of the complaint. But Mr T didn't agree. He said that he was a loyal customer and was manipulated by the scammers. He explained that he had suffered significant distress and financial loss – he felt leaving him in debt was unfair.

As the complaint couldn't be resolved, it has been passed to me.

In my provisional decision of 7 September 2023, I set out why I was minded to partially upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. NatWest replied and after clarifying its understanding of redress, said it would be happy to resolve the case in accordance with the provisional findings set out. Mr T did not reply.

### **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.

In my provisional decision I explained the following:

*...currently I intend to uphold this complaint in part for broadly the same reasons as our investigator, and I'll explain why.*

*To begin with, where customers authorise payments from their accounts, businesses such as NatWest are under an obligation to process such transfers. If consumers are the victim of a scam (like Mr T), the starting point is that consumers are responsible. To be clear, NatWest did not scam Mr T and it is not the perpetrator of the scam.*

*However, financial businesses also have a duty to try to prevent their customers falling victim to scams. Businesses therefore need to strike a balance between intervening in payments to prevent scams or financial harm, against the risk of unnecessarily inconveniencing or delaying legitimate transactions.*

*In order to uphold a complaint of this nature, I'd need to be satisfied that NatWest had failed in its duty of care towards Mr T, and had it instead done what it should have done, it could have prevented the loss.*

*The first few payments Mr T sent were less than £1,000 and otherwise unremarkable. So, I don't think it's unfair that NatWest didn't flag these as unusual. But when Mr T sent a third payment of £3,100 to N after two earlier payments on the same day (7 July 2022), NatWest correctly stopped this payment and contacted Mr T to discuss its concerns. NatWest asked Mr T a series of questions with a view to determining whether he was potentially being scammed but Mr T mis-led NatWest. He told NatWest that the account with N was recommended by a friend, that he was buying Bitcoin and acting independently. On further*

questioning, Mr T again confirmed that no third parties had called or emailed him, that the money was going to his own account, and that his previous payments had been received into the account. He also told NatWest that he didn't know any return rates as he had only started trading and will see how it goes. He finally, confirmed again no third parties had asked him to transfer the money. NatWest still gave him a scam warning and informed him that he may not be able to get the money back if he proceeded. Mr T went ahead with the transfer.

*I think this intervention call was reasonable but, despite NatWest's efforts, it wasn't able to discover the scam.*

On 8 July 2022 Mr T successfully applied for a loan of £20,000 from NatWest for home improvements. On the same day, he tried to transfer £15,000 of the loan money to his account with W, but this was stopped by NatWest. NatWest called Mr T and spoke to him, and he confirmed the money was being sent to his account with W, and it would then be sent to his home country for home improvements (which is in line with the purpose of the loan). NatWest asked Mr T to visit branch with ID, which he did. While at the branch, staff witnessed Mr T logging into his account with W, using his phone. NatWest then carried out another intervention call, and due to branch staff being satisfied the Mr T had access to his account with W, and Mr T assuring it that he was using the money for home improvements, NatWest agreed to process the payment. However, £14,900 of this sum was returned by W.

On 13 July 2022, Mr W sent £5,000 to N. However, by this time N had become an established payee and Mr W had significant amounts of money going in and out of his account. So, I don't think this payment alone stands out as unusual and I don't think it's unreasonable that NatWest didn't flag this payment as suspicious.

On 14 July 2022, Mr T tried to make further payments to N. As these were being sent in short succession and only a day after the £5,000 on the 13 July 2022, NatWest blocked three transactions and contacted Mr T. He said the payments to N were to trade, that he'd done it before, and was happy the money was being received into his account. He also confirmed no one had asked him to transfer the money. NatWest therefore allowed the payments to N to be sent.

*This call, as a standalone intervention call, doesn't appear particularly inadequate. However, I have to assess all the information available to NatWest bearing in mind it is the expert and should be familiar with the usual themes of these types of scams – one of which is consumers being told to lie to their bank. NatWest could see that the £15,000 was originally supposed to be sent to W for home improvements, that this money was returned by W, and these same funds were now being sent to N. Like our investigator says, I think it had enough information available to it that it ought to have realised that Mr T may be mis-leading it and probed further to find out what was really happening. Had it done so, it seems probable that on further questioning and providing context of the common themes of this type of scam, Mr T would have been alerted about the scam in time and stopped the payment in its tracks. So, I think an intervention likely would have prevented this loss and the ones that followed.*

*So, I think NatWest should refund the payments made from 14 July 2022 onwards.*

*I've gone on to consider whether Mr T's redress should be reduced for contributory negligence. I believe Mr T was a victim of a scam and also that he trusted the scammer. But I also have to bear in mind that Mr T transferred substantial sums of money to the scammers in a short space of time. He sent this money to an unregulated business, without seeking any formal financial advice, and without having had any previously dealings with it. Mr T also accepted he had doubts from the start and tried to get his initial deposit back but was instead persuaded to invest.*

*In my view, Mr T ought to have recognised that there was some risk in sending that much money to an unknown and unregulated company in addition to his own doubts about the scammers. I think he ignored these doubts unreasonably. He also repeatedly lied to NatWest. While I sympathise with his position, for the reasons explained above, I still think he should bear some liability for the loss because he hasn't acted reasonably considering all the circumstances of this case. So, I think NatWest can deduct 50% from his redress award in recognition of this.*

*Mr T used money from his loan with NatWest to make the payments from 14 July 2022 onwards. So, I think NatWest should refund the interest charged on the portion of the loan being refunded from 14 July 2022. If Mr T has made any repayments to the loan, NatWest should refund overpayments made towards the portion of the loan being refunded and 8% interest should be added on any amounts refunded.*

*I understand the experience has caused Mr T significant distress and inconvenience. While I am very sorry for the difficulties he has experienced, ultimately it was the scammer who was responsible for his suffering. And whilst I have concluded NatWest most likely could have prevented some of the payments, I've also explained why I think a 50% reduction to the compensation due to contributory negligence is appropriate. Bearing all of this in mind, overall, I'm satisfied the award I have set out here represents a fair outcome to this case, so I don't intend to make an additional award for distress and inconvenience.*

*I've also thought about the payment Mr T made on his credit card that he says was related to the scam. I can see Mr T paid a deposit of €250 on his credit card to a different merchant. But this payment was refunded by the merchant a few weeks later so I don't think NatWest needs to do anything further about this payment.*

*Putting things right*

*NatWest should pay Mr T:*

- 1. A refund of 50% of the scam payments made by Mr T from the 14 July 2022.*
- 2. As these payments came from a NatWest loan, NatWest should also refund the interest it charged on the portion of the loan being refunded from 14 July 2022.*

*The above refunds should be off set against the loan, so Mr T's debt is reduced by that amount.*

- 3. If Mr T has made any repayments towards the loan since 14 July 2022, NatWest should refund any overpayments made. (NatWest only needs to refund the portion of repayments that were made towards the portion of the loan being refunded.)*
- 4. 8% interest should be added on any amounts refunded.*

*If NatWest deducts tax from any interest, it should provide the Mr T with the appropriate tax deduction certificate.*

NatWest replied to my provisional decision explaining that Mr T had only made one payment to the loan. So, we explained to both NatWest and Mr T that, given Mr T hadn't made the usual monthly payments under the loan, we didn't think it was necessary for NatWest to work out any overpayments made to the loan. We explained the remaining part of the redress order would remain the same but for any further comments made by either party.

NatWest replied agreeing to put matters right in accordance with my findings while Mr T made no comments. In the absence of any new points for me to consider, I find no reason to

depart from my original findings as set out in my provisional decision with the redress adjusted so NatWest does not have to refund any overpayments made to the loan.

### Summary

- NatWest does not have to refund the payments Mr T made before 14 July 2022, as I don't think it failed in its duty of care towards Mr T. In my view, NatWest carried out appropriate interventions but did not discover the scam.
- I think NatWest should refund the payments Mr T made after 14 July 2022 as despite Mr T mis-leading it, it ought to have been aware that sometimes consumers are told by scammers to mislead their banks. Overall, I think NatWest had enough information to ascertain that Mr T had not been forthcoming with the truth. I therefore think it could have discovered the scam at this stage and prevented the losses that followed on from this date.
- NatWest can reduce the redress by 50% for contributory negligence as Mr T had not behaved reasonably in all the circumstances of the case, so I think it's fair for Mr T to also bear some of the loss.

### Putting things right

NatWest must:

1. Refund 50% of the scam payments made by Mr T from the 14 July 2022.
2. As these payments came from a NatWest loan, NatWest should also refund the interest it charged on the portion of the loan being refunded from 14 July 2022.

The above refunds should be off set against the loan, so Mr T's debt is reduced by that amount.

If NatWest deducts tax from any interest, it should provide the Mr T with the appropriate tax deduction certificate.

### My final decision

For the reasons explained, I uphold this complaint in part. National Westminster Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 October 2023.

Asma Begum  
**Ombudsman**