

The complaint

Mr H complains that National Westminster Bank Plc (NatWest) is refusing to refund him the amount he lost as the result of a scam.

Mr H is being represented by a third party. To keep things simple, I will refer to Mr H throughout my decision

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary Mr H found an advertisement on Facebook for an investment in cryptocurrency. The investment appeared to be endorsed by a well-known celebrity. Interested in the investment Mr H completed an online data capture form.

Mr H then received an email from GM group (X) followed by a call. X explained the investment to Mr H and set him up with an account.

Mr H has explained that X appeared very professional, and he was allocated his own account manager. Mr H was asked to download the screen sharing application AnyDesk and X helped Mr H open a new bank account with Wise and an account with Binance that it said was needed for the investment.

Mr H could access all the accounts and could see his investments via the account he had with X in real time. This made Mr H feel comfortable the investments he was making were genuine.

Mr H made the following payments on X's instruction:

<u>Date</u>	<u>Payment Method</u>	<u>Merchant</u>	<u>Amount</u>
18 March 2022	Debit Card	Calltrax.com	£200
24 March 2022	Transfer	Skrill	£10
25 March 2022	Transfer	ClearBank	£200
13 May 2022	Transfer	Wise	£5
14 May 2022	Transfer	Mr H	£365
16 May 2022	Credit	Wise	- £200
17 May 2022	Credit	Skrill	- £50
17 May 2022	Transfer	Mr H	£650
17 May 2022	Transfer	Mr H	£2,250

When Mr H tried to make a further payment into the scam for over £2,000 the payment was stopped, and his online account was suspended. No further payments were made into the scam.

Our Investigator upheld Mr H's complaint in part and suggested that NatWest should refund Mr H the £200 payment he made to ClearBank on 25 March 2022. NatWest agreed but Mr H didn't agree so this complaint has been passed to me to decide.

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.

It has not been disputed that Mr H has fallen victim to a cruel scam. The evidence provided by both Mr H and NatWest sets out what happened. What is in dispute is whether NatWest should refund the money Mr H lost due to the scam.

Recovering the payments Mr H made

Mr H made payments into the scam via his debit card and the method of transfer.

The first payment Mr H made was via his debit card. When a payment is made by debit card the only method of recovery NatWest has is to raise a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed.

NatWest has explained it didn't raise a chargeback for this payment as Mr H would have to provide specific evidence to prove he did not receive the service he paid for from the payee for the chargeback to be successful. I think this is reasonable given the circumstances of the complaint.

The remaining payments were made via transfer and when a payment is made in this way NatWest has limited options available to it to recover the payments.

I have considered if Mr H should have received a refund under the Contingent Reimbursement Model (CRM) code. But the CRM code only applies when domestic payments (as the result of a scam) are sent to another person. Here most of the payments Mr H sent funds to accounts held in his own name.

The only payment I can see that would have been covered by the CRM code is the one Mr H made to ClearBank on 25 March 2022 for £200. As this appears to have been made to a different person because of a scam via transfer, I think it is fair that this payment should be refunded under the CRM code.

Should NatWest have reasonably prevented the payments the remaining payments Mr H made?

It has been accepted that Mr H authorised the payments that were made from his account with NatWest, albeit on X's instruction. So, the starting point here is that Mr H is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether NatWest should have been aware of the scam and stepped in and questioned Mr H about them. And if it had questioned Mr H, would it have been able to

prevent the scam taking place.

The payments Mr H made into the scam were for relatively small amounts and were spread across several days. The payments were also made to a legitimate payee. It wouldn't be reasonable for me to say NatWest should step in every time one of its customers makes a payment to a new business especially when that business appears legitimate. So even though it's likely Mr H saw a basic scam warning when he made at least some of the transfers I don't think it would be reasonable for me to say NatWest's fraud prevention systems should have been triggered and it should have done more to prevent Mr H's loss.

As I've said above Mr H should have received a refund under the CRM code for the payment he made to ClearBank on 25 March 2022. But NatWest is not responsible for any of Mr H's other losses.

Putting things right

National Westminster Bank Plc should refund the £200 payment Mr H made into the scam on 25 March 2022.

National Westminster Bank Plc should add interest equal to that Mr H would have earned on this amount in his savings account to the amount it pays Mr H from the time Mr H made the payment to the time National Westminster Bank Plc provides the refund (less any lawfully deductible tax).

My final decision

I uphold this complaint and require National Westminster Bank Plc to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 January 2024.

Terry Woodham
Ombudsman