

Complaint

Mr K is unhappy that National Westminster Bank Plc (NatWest) hasn't refunded the money he lost to an investment scam.

Background

In January 2019, Mr K was approached on social media and invited to invest his money on a platform. The person who contacted him claimed to be a financial advisor who could assist him with managing investments in foreign exchange and cryptocurrencies. Unfortunately, that person wasn't a genuine financial advisor, but a fraudster.

In total, Mr K transferred £7,908.05 in a period stretching from January 2019 until 6 November 2020. Mr K was told that the advisor could turn a £500 investment into £20,000 within 8 weeks. However, he became suspicious when the advisor stopped responding to his messages on social media. He realised it was a scam when he wasn't able to withdraw the profits he believed had been earned on his investment.

He notified NatWest but it didn't agree to refund the money he lost. Mr K was unhappy with that and so he referred the complaint to this service. It was looked at by an Investigator who didn't uphold it. She thought that Mr K ought to have been more sceptical of the proposed investment. He'd received an unsolicited approach on social media, which would be atypical of a genuine investment firm. In addition, the returns that he was promised were so extraordinary that they were obviously too good to be true.

Finally, she added that, while NatWest didn't appear to have displayed any warnings when Mr K made these payments, it's only expected to do so where it identifies a fraud risk. The Investigator said that these payments weren't particularly high and were in keeping with the way the account had been used historically. As a result, she didn't think the bank had done anything wrong in not displaying warnings.

Mr K's representatives responded on his behalf. They pointed out that he is financially inexperienced and so wouldn't have understood what constitutes a reasonable return. Because Mr K's representatives disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

Findings

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

The starting point in law is that Mr K is generally considered liable for any payment that he's authorised. It's common ground between the parties that these payments were duly authorised and so he is presumed liable at first instance. However, NatWest is a signatory to the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Under the terms of that voluntary code, signatories should reimburse customers who fall victim to scams like this one in all but a limited number of circumstances.

NatWest doesn't have to reimburse its customer if it can show that one of the exceptions in that Code applies. In this instance, the relevant exception is where *"the Customer made the payment without a reasonable basis for believing that [...] the person or business with whom they transacted was legitimate."*

I've considered the available evidence carefully and I'm satisfied that Mr K didn't have a reasonable basis to believe that this investment was a genuine one. He received unsolicited contact on social media inviting him to participate in the investment. And while it's common for legitimate investment companies to have an active social media presence, this would be an unusual way for a genuine company to promote itself.

I also agree with the Investigator's conclusion that the returns Mr K was promised were simply too good to be believable. I accept what his representatives have said about his relative financial inexperience making it more difficult for him to identify whether a promised return is realistic or not. But in this case, Mr K was promised a return of 4,000% in 8 weeks – an annual equivalent of 26,000%. These returns were so extraordinary that I don't think any great level of knowledge would be required to identify this as a red flag and to proceed with caution.

Good industry practice also required that NatWest be on the lookout for account activity that was unusual or out of character that might indicate one of its customers was at risk of falling victim to fraud. On spotting such a risk, I'd expect it to take reasonable steps to protect its customer. This might entail displaying a warning during the payment process or temporarily blocking a payment so it can discuss it with the customer.

We now know that Mr K was falling victim to an investment scam. But the question I must consider is whether that risk could've been reasonably anticipated by NatWest at time. In this instance, I'm not persuaded it could've spotted the risk and so I don't find it would've had any reasonable basis for taking any action in response to any individual payment. The individual payments weren't particularly large (the largest single payment was £500) and they were spaced out over a long period of time meaning that it wouldn't have been possible to identify any pattern to them. They were also generally in keeping with the way Mr K operated his account.

I'm not saying any of this to downplay the fact that Mr K has fallen victim to a cynical scam and has lost a significant amount of money. But my role here is limited to considering the actions and inactions of the bank and, while I know my decision will be hugely disappointing to him, I'm not persuaded NatWest did anything wrong here.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 30 November 2023.

James Kimmitt
Ombudsman