Financial Ombudsman Service

The complaint

Mr C is unhappy that National Westminster Bank Plc ('NatWest') won't reimburse him a loss he says he suffered at the hands of fraudsters.

What happened

As the circumstances of this complaint are known to both parties, I've summarised them briefly below.

In early 2023, Mr C received a call from a third-party business which offered him an opportunity to enter a program. This program was designed to assist people in setting up an e-commerce business and boost sales.

Mr C was sent an agreement regarding the program and was instructed to make a payment of £5,000 for its services. Mr C made this payment from his NatWest account on 28 February 2023.

After making the payment and receiving instructions from the business, Mr C decided that the commitment to the program was too much as he was unaware how much work was required. So, he contacted the business and asked it for a refund.

On 9 May 2023, Mr C received a refund into his account from the business for £1,000. But the business failed to respond to his requests to refund the remaining balance. This led Mr C to believe he'd been the victim of a fraud.

Mr C contacted his bank and reported the fact that he'd been defrauded. NatWest looked into Mr C's complaint but didn't offer to reimburse him his loss. It pointed out that the business appeared to be legitimate and that the matter was a civil dispute between both parties. Mr C didn't agree, so he asked our service to look into his complaint.

An Investigator considered the evidence provided by both parties but didn't recommend the complaint be upheld. They concluded that the business did appear to be genuine and therefore NatWest had no obligation to consider reimbursing Mr C his loss.

Mr C disagreed. He remained of the opinion that he had been defrauded, so the matter has been passed to me for a final 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.

The starting position in law is that Mr C will generally be considered liable for authorised payments. It's accepted that he authorised the payment in dispute and so he is liable for it at first instance. However, NatWest is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Under that Code, firms are expected to reimburse customers who fall victim to fraud, subject to a number of exceptions.

However, the Code is only relevant if I'm persuaded Mr C did fall victim to a fraud. It specifically says that it doesn't apply to *"private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them …"*

Likewise, good industry practice requires that NatWest be on the lookout for account activity that might been indicative of a fraud risk. On identifying a payment that is out of character or unusual to the extent that it might have posed such a risk, it ought to intervene in a manner proportionate to that risk. However, much like the CRM code, these requirements don't apply to genuine payments made to legitimate businesses.

So, taking into consideration the above, I must first decide whether Mr C has likely been the victim of fraud or not. Having considered all of the evidence in this case, I find it more likely than not that Mr C has not been a victim of fraud in this instance. I know this will come as a disappointment to Mr C, but I will explain how I've come to this conclusion below.

Cursory online research of the business he transacted with doesn't demonstrate a likely probability that the business was operating fraudulently. It is a registered business that was incorporated several years ago. The business still has a functioning website which I'd have expected to have been disabled had multiple reports of fraud been made against it. I've also checked well-known review websites which show mixed reviews of the business online, but no persuasive evidence the business was, or is, operating fraudulently.

I've also considered Mr C's specific dealings with the business to determine if it appears to have misrepresented itself when offering its services. Mr C hasn't provided us with all communications between him and the third-party business, but from the correspondence he has sent it doesn't appear the business has misrepresented itself.

Mr C has provided an agreement he had signed and agreed to. The contract sets out what the business will provide and what the expectations of Mr C were. It provides the fee it charges for its services and sets out what its cancellation policy is. The cancellation policy clearly states that a refund will only be issued where certain requirements are met – of which includes launching e-commerce products.

Mr C has admitted that once he saw what he was required to do as part of the program, he no longer wanted to participate and asked for a refund. This meant that it was Mr C rather than the business that wanted to terminate the contract. And even though Mr C hadn't fulfilled his requirements under the program, he was still refunded £1,000 of the fee he paid on 9 May 2023.

While this didn't represent the full amount paid, I find it unlikely a business operating fraudulently would have refunded him any amount.

Taking all of the above information into account, I find it more likely than not that Mr C hasn't been defrauded here. It appears he was dealing with a legitimate business and decided to terminate the contract himself, resulting in a partial refund.

I realise Mr C would like to be reimbursed in full. But that is a matter between him and the third-party business that took the fee. I don't find it fair or reasonable to hold NatWest responsible for reimbursing Mr C his loss where it hadn't made an error in processing the payments in line with Mr C's instruction.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 December 2023.

Stephen Westlake
Ombudsman