

The complaint

Mr C complains that National Westminster Bank Plc won't refund the money he lost when he was the victim of a scam.

What happened

In late 2022, Mr C received a text message from a number he'd not been contacted from before. He replied and began a conversation with the person who sent the message, which continued over the next few days. And during this time they got to know each other and their relationship developed to the point where Mr C thought they were in a romantic relationship.

The person mentioned that they had made money investing with cryptocurrency and encouraged Mr C to invest as well. They told him about the investment company they used and, when Mr C agreed to try it, they talked him through the process of investing. This included setting up an account with the investment company, transferring money from his NatWest account to a cryptocurrency exchange, purchasing cryptocurrency and then sending the cryptocurrency to the investment company's trading platform.

Mr C made a number of payments to the cryptocurrency exchange, and says he could see the cryptocurrency he then purchased and the profit he was supposedly making appearing on the trading platform. I've set out the payments Mr C made from his NatWest account below:

Date	Details	Amount
1 December 2022		£100
2 December 2022		£400
8 December 2022		£500
14 December 2022		£1,000
28 December 2022		£1,000
28 December 2022		£100
28 December 2022		£19,900
3 January 2023		£18,000
4 January 2023		£18,000
5 January 2023		£18,000
5 January 2023		£50
6 January 2023		£18,000
9 January 2023		£4,000

In January 2023, Mr C was happy with the profits he had been making and so asked to withdraw his money from the trading platform. But he was then told there were problems with his account and he would need to make further payments before he could withdraw his money. Mr C then realised he'd been the victim of a scam and asked NatWest to refund the money he had lost.

NatWest investigated but said it had called Mr C before the seventh payment he made and warned him about possible scams, but he had continued to make the payment. It said it

didn't think it had made an error and so didn't agree to refund the payments Mr C had made. Mr C wasn't satisfied with NatWest's response, so referred a complaint to our service.

I sent Mr C and NatWest a provisional decision on 21 December 2023, setting out why I was intending to uphold this complaint in part. An extract from my provisional decision is set out below:

"Banks are expected to make payments in line with their customers' instructions. And Mr C accepts he made the payments here. So while I recognise he didn't intend for the money to ultimately go to scammers, he did authorise the payments. And so the starting position in law is that NatWest was obliged to follow his instructions and make the payments. So Mr C isn't automatically entitled to a refund.

However, the regulatory landscape, along with good industry practice, sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think NatWest should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among 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 help protect customers from the possibility of financial harm from fraud.*

And so I've also considered whether NatWest should have identified that Mr C was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect him.

Did NatWest do enough to protect Mr C?

The first few payments Mr C made from his NatWest account as part of this scam weren't for what I'd consider to be particularly large amounts of money. They also didn't use a significant proportion of the available balance in Mr C's account, or leave the balance of his account at a particularly unusual level. So I wouldn't have expected NatWest to identify that Mr C could be at risk of financial harm as a result of these payments and I don't think it's unreasonable that NatWest didn't take any further steps or carry out any additional checks before allowing these payments to go through.

But when Mr C tried to make the seventh payment here, for £19,900 on 28 December 2022, I think NatWest should have identified that he could be at risk of financial harm. This payment was for a significantly larger amount. And at this point Mr C had made a number of payments to a cryptocurrency exchange over the previous weeks, with the amounts increasing each day he made a payment, which matches a pattern of payments often seen in scam cases. So I think NatWest should have intervened and carried out additional checks before allowing this payment to go through.

NatWest did stop this payment and spoke to Mr C to ask him questions about it before allowing it to go through. But I've listened to a recording of this call, and I don't think NatWest did enough in it to protect Mr C.

In the call, NatWest asks Mr C what the payment is for. And he explains it is going to a cryptocurrency exchange and that he gets a return on his investment by providing financing for trading. NatWest then asks if this is part of Mr C's business, and he says it is part of something he has been doing for the last month. But Mr C's answers are quite vague and don't provide a particularly clear explanation of what the payment is for. And NatWest doesn't ask any follow-up questions to get more detail on what he was doing.

NatWest doesn't ask how Mr C found out about this investment or whether anyone is helping or guiding him through it. And it doesn't ask more probing questions about how the investment works, how his profit is supposedly generated and what returns Mr C is supposedly seeing. It also doesn't explain what common cryptocurrency scams can look or feel like, or give Mr C any advice on steps he can take to make sure he's not falling victim to a scam. So I don't think the additional checks NatWest did were sufficient to address the risk it should have identified, and I think it should have done more to protect Mr C before allowing this payment to go through.

If NatWest had asked more probing questions, I think it would have found out that Mr C had been recommended the trading platform by someone he had recently started talking to but never met in person. I don't think Mr C would have been able to give a particularly clear explanation of how the investments he was making worked, and I think the returns he was told he had been making would have sounded too good to be true. So I think NatWest should then have had serious concerns and explained to Mr C that he was likely the victim of a scam.

And as NatWest is the expert in financial matters in this situation, I think its concerns would have carried significant weight with Mr C. I think if NatWest had explained that his circumstances matched common cryptocurrency investment scams and given him some steps he could take to check whether it was legitimate, the scam would have been uncovered and Mr C wouldn't have made any further payments towards it.

So if NatWest had done more to protect Mr C before allowing the seventh payment, as I think it should have, I don't think Mr C would have lost the money from this payment or any of the later payments. And so I think it would be reasonable for NatWest to bear some responsibility for the loss Mr C suffered from that point on.

Should Mr C bear some responsibility for his loss?

I've also thought about whether it would be fair for Mr C to bear some responsibility for his loss. And while I appreciate that this was a sophisticated scam where Mr C was manipulated by the person he was initially messaging and then given access to a trading platform which appeared to show profits he was making, I do think there were a number of things about what was happening that should have caused him significant concern.

The first contact Mr C received was a text message from a number he'd never been contacted from before, and that appeared to be a wrong number and not intended for him. So I think it should have caused him significant concern when the person who sent the message then engaged in such a significant conversation with him, and particularly when they then encouraged him to invest in an area he had no experience or expertise in.

Mr C made the first payment to the cryptocurrency exchange just three days after the first text message he received, and he'd sent a total of £1,000 just over a week later. But the

person Mr C was speaking to doesn't appear to have given him any evidence of who they were or of their experience of the investing they were suggesting he get involved in. And Mr C doesn't appear to have taken any steps to confirm this either. And I think it would be reasonable to expect some checks into these things before placing so much trust in their recommendations or sending the amounts of money he did.

From the messages I've seen between Mr C and the person he was messaging, Mr C doesn't appear to have had a particularly clear understanding of how the investments he was making worked, where the cryptocurrency he was buying was going or how the profits he was making were generated. And I also think it would be reasonable to expect him to have a clear understanding of this before sending the amount of money he did.

Mr C was also told he was using a version of the trading platform which hadn't yet been released to the public and so could provide higher than usual profits. But he doesn't appear to have been given any explanation of why he or the person he was messaging had been given access to this version of the platform before it was released. And I think the profits he was told he was making were unrealistic, particularly over such short periods of time and with no apparent risk. So I think this should have caused him significant concern about whether what he was being told was too good to be true.

I sympathise with the position Mr C has found himself in. But I think there were a number of things here which should have caused him significant concern. And I don't think the seemingly genuine information he got from the checks he did do should have been enough to overcome those concerns. So I think it would be fair for him to bear some responsibility for the loss he suffered.

As I think both Mr C and NatWest should bear some responsibility for the loss he suffered, I think it would be fair for NatWest to refund 50% of the money Mr C lost – from the ninth payment onwards.”

I said I'd consider anything further Mr C and NatWest sent in following the provisional decision, provided it was received by the deadline given.

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.

Mr C responded to the provisional decision, saying he was happy to accept it. NatWest responded to the provisional decision with a number of points, which I will address below.

NatWest first said the return Mr C was told he was receiving was too good to be true and that he didn't do sufficient due diligence checks. But I explained in my provisional decision that I felt there were a number of things about what was happening that should have caused him concern – including that the profits he was told he was making were unrealistic.

I said I felt it would be fair for Mr C to bear some responsibility for the loss he suffered, and so NatWest's arguments don't change my conclusions here. And I don't feel it would be fair for Mr C to bear full responsibility for the loss, as I also think NatWest should have done more to protect him and so should also bear some responsibility.

NatWest also said it is required to make payments in accordance with the instructions of its customers, and can only refuse to act on those instructions if it reasonably believes they didn't authorise the instruction or the payment may result on them being the victim of fraud. But it is this belief that Mr C may be the victim of fraud that I think should have caused it to

question these payments further. I think NatWest should have identified that Mr C could be at risk of financial harm.

And, while Mr C was vague in some of the answers he gave, he did answer the questions he was asked honestly. He didn't try to deceive NatWest about the purpose of the payments and I've not seen anything to suggest he would have wanted to continue making the payments regardless of any intervention from NatWest. As NatWest is the expert in this situation, I still think a clear explanation that his circumstances matched common cryptocurrency investment scams and examples of steps he could take to check whether it was legitimate would have prevented any further payments being made.

Finally, NatWest said that the first point of loss here was the bank the funds Mr C sent to the scammer were originally held with, and questioned whether this bank should also have some liability for the loss. But I've not seen anything to suggest this other bank intervened when Mr C transferred the funds out of the account he held with it. And I can only assess the complaint our service has been asked to consider which, in this case, is about NatWest.

So I still think the findings I set out in the provisional decision are correct. I still think both Mr C and NatWest should bear some responsibility for the loss he suffered and that it would be fair for NatWest to refund 50% of the money Mr C lost – from the ninth payment onwards.

My final decision

For the reasons set out above, I uphold this complaint in part, and require National Westminster Bank Plc to:

- Refund Mr C 50% of the money he lost, from the ninth payment onwards – for a total of £47,975
- Pay Mr C 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 April 2024.

Alan Millward
Ombudsman