DRN-3895513

The complaint

Mr S complains that National Westminster Bank Plc ("NatWest") won't refund him money he lost as a result of falling victim to a fraud.

What happened

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

Mr S found an investment opportunity through an advert he'd seen on a social media platform. After seeing positive reviews online of the business offering the investment, Mr S decided to invest.

Mr S made an initial card payment of £899. And between 8 April 2021 and 15 June 2021, Mr S made five bank transfers to the investment firm totalling £75,000 from his NatWest account. Unfortunately, it later transpired that Mr S had fallen victim to an investment fraud.

Mr S complained to NatWest that it could have done more to prevent him falling victim to the fraud. After looking into the complaint, NatWest disagreed. It felt Mr S could have done more to ensure the investment firm was genuine before he decided to transfer the funds. It also argued that he ignored the warnings it provided and red flags regarding the payee's account details returning as a negative match.

Mr S remained unhappy with NatWest, so he brought his complaint to our service for an independent review. An Investigator considered the evidence provided by both parties and concluded NatWest should reimburse 50% of Mr S's loss.

The Investigator considered the complaint under the Contingent Reimbursement Model (The CRM Code): a voluntary code that NatWest has signed up to which offers victims of fraud better protection. The Investigator concluded that Mr S hadn't met his requisite level of care because he failed to carry out sufficient research on the purported investment firm prior to making the payments. They also felt that Mr S ignored warning signs, such as no match on the confirmation of payee process and returns that appeared too good to be true.

However, the Investigator also felt that NatWest had failed in its duty to provide an effective warning when Mr S made the payments. As such, split liability was recommended. The Investigator didn't recommend the initial £899 card payment be reimbursed as the payment wasn't out of character for the account, and there were no chargeback rights available when Mr S reported it as fraudulent.

Both Mr S, through his representative, and NatWest disagreed with the assessment and recommendations given by the Investigator. In summary, Mr S felt that he carried out sufficient checks on the investment firm, and NatWest felt it had provided adequate warnings as part of the payment process. NatWest also argued that the payments didn't fall under the scope of the CRM code as the funds were transferred to a cryptocurrency wallet in Mr S's own name.

As both parties disagreed with the Investigator's assessment and recommendations, the matter was passed to me for a decision.

On 7 July 2023 I issued provisional findings to both parties setting out what I was minded to conclude based on the evidence. The provisional findings were as follows:

'Card payment

Mr S initially made a card payment to the fraudster for £899. My S accepts that he authorised this payment albeit as part of what he would eventually realise was a deception.

Having looked at Mr S's bank statements prior to the payment, I'm not persuaded that it would have appeared unusual or out of character when compared to his normal account activity.

The payment wasn't of such high value that NatWest ought to have noticed it and intervened. It's reasonable that payment service users could be expected to make the occasional higher value purchase. And it would be unreasonable to expect banks to stop all slightly higher than normal payments considering the number of these it processes at any given time.

I'm therefore satisfied that NatWest's decision not to intervene and question this payment was reasonable.

In any event, Mr S admits to receiving returns connected to this payment into another account and is therefore no longer at a loss from it. Chargeback rights are therefore irrelevant in this case.

Bank transfers

Despite NatWest's disagreement, the bank transfers made as part of this scam are covered by the Contingent Reimbursement Model (the CRM Code) – a voluntary code signed up to by NatWest that offers victims of specific types of payment fraud better protection.

NatWest has argued that the payments Mr S made weren't covered by the CRM Code as they were made to his own cryptocurrency wallet and then moved onto the fraudster. And payments to oneself aren't covered by the Code. But our Investigator has looked into this point and has obtained evidence from the receiving firm that the accounts weren't held in Mr S's name. Therefore, I'm satisfied that these payments do fall within the remit of the Code.

The default position within the CRM Code is that a firm—in this case NatWest—should reimburse payments to a customer that have been made as a result of an authorised push payment fraud, as long as those payments fall within the remit of the Code.

There are, however, exceptions to reimbursement that a bank can rely upon. The relevant exceptions in the circumstances of this complaint are:

- *The customer made the payment without a reasonable basis for believing that payee or business they were paying was legitimate.*
- *The customer ignored effective warnings given by the firm that were compliant with the Code.*

Having considered the evidence provided by both parties, I'm not persuaded NatWest are responsible for reimbursing Mr S his losses here.

Mr S found the purported investment via an advertisement on an online social media platform, where he says it was being promoted by a well-known journalist. Our service hasn't seen this advertisement, so it's difficult to say if this would have been convincing. But open resource research reveals no evidence that the legitimate journalist promoted this firm, leading me to conclude that the advertisement was falsified.

Following witnessing this advertisement, the only research Mr S carried out on the firm was via general online searches which Mr S says returned minimal information. He has however argued that some positive online reviews and the endorsement of a well-known journalist was enough to convince him it was legitimate. But I'm not persuaded this gave him a reasonable basis for believing it was legitimate.

Mr S says that he isn't an experienced investor, and this is why he lacked knowledge in identifying businesses that may have been illegitimate. But having looked through Mr S's account statements in both this case and others linked to it, it appears there are numerous transactions that support the contrary. I can see multiple high value payments in and out of the accounts from legitimate investment firms dealing in stocks and cryptocurrency prior to the fraud.

Even if I were to be persuaded that Mr S was an inexperienced investor and had only recently begun exploring this pursuit, I would have expected him to have proceeded with more caution in an area he was unfamiliar with and lacked experience in.

Mr S, by his own admission, merely carried out basic online searches and could find minimal material online relating to the business. This, in my view, should have caused Mr S concern as it's likely that a legitimate business would have a better online presence.

Furthermore, Mr S hasn't been able to furnish our service with the positive reviews he witnessed online. But again, basic online research I've carried out reveals that at the time Mr S discovered the business, there were reviews online that strongly indicated that the business was operating fraudulently. I accept that Mr S may not have found these, but this is merely to demonstrate the lack of research Mr S likely conducted.

Mr S has also disclosed that he was provided with no tangible documentation setting out what his investment was, what his returns would be and didn't sign any contractual agreements regarding the proposed business relationship. He'd only been given access to an online platform to check his purported investment and received telephone calls from an individual that seemed professional.

Overall, I'm persuaded that Mr S didn't do enough here to ensure he was dealing with a legitimate business and decided to ignore warning signs that should have prevented him from continuing with the payments.

Did NatWest do enough to prevent Mr S from falling victim to the fraud?

As well as the CRM Code, banks have a general obligation to be on the lookout for unusual or out of character payments on a customer's account that may indicate they are at risk of fraud: among other things.

Where a fraud risk is identified, a bank is expected to intervene to ensure the customer is warned appropriately and, in some circumstances, should stop the payment altogether if it has sufficient information to do so.

Here, Mr S attended a branch of NatWest to carry out the transactions over the counter. The first payment made to the fraudsters was a significant payment of £10,000. Considering

Mr S's usual account activity, this payment was of a significant value in comparison to historic activity and was to a new payee.

NatWest says that it did treat this as a high-risk payment and asked Mr S a series of questions in branch to ensure he wasn't victim of a fraud. But these questions were largely unrelated to Mr S's circumstances and limited to a checklist format. Mr S's initial reasons for the payment were taken at face value and no meaningful challenge or probing questions were given.

I don't find this to have been adequate in getting to the crux of what the payment was being made for. And had NatWest probed further, such as asking how Mr S had discovered the investment, I think it would have been clear that he had likely fallen victim to a fraud. This is further supported by NatWest's decision to probe further in later payments, resulting in it refusing to make them altogether and any future payments to the payee.

While I find NatWest correctly probed the payments at a later stage and prevented any further loss, it should have done this sooner.

If NatWest had done more, would it have likely prevented Mr S's losses?

While NatWest could have done more at an earlier stage, I'm not persuaded that this would have made a difference here.

Later in the sequence of events, NatWest blocked Mr S's payments to the fraudster. And after asking some probing questions, it was convinced Mr S was in fact the victim of a fraud and refused to make any further payments. I've listened to the call between NatWest and Mr S, and he was explicitly informed about this by the advisor. Mr S can be heard acknowledging the warning and was advised to divert his efforts to recovering the funds he'd already sent.

However, despite this, Mr S continued to make the payments to the fraudster by transferring funds from his NatWest account to another account in his name held with a third-party provider and onto the payee.

I realise that Mr S likely did this as he was convinced the investment was genuine. But he'd already failed to carry out any meaningful diligence checks on the investment firm and at this stage had been told plainly that he was likely the victim of fraud. This persuades me that even had NatWest done more at an earlier stage and refused to make the payments, Mr S would have still gone ahead and made the payments via different means.

For these reasons, I don't find it likely that any actions carried out by NatWest would have prevented Mr S from continuing with the payments. I therefore don't find it reasonable to now expect NatWest to reimburse Mr S for his losses, as any intervention wouldn't have had a material impact on his decision to invest.'

Both parties were provided an opportunity to respond to the findings set out in my provisional decision.

NatWest didn't provide any further comment. However, Mr S, through his representative, disagreed. In summary, the following arguments were made:

- Earlier intervention would have likely been more impactful
- As Mr S had already invested large sums of money at the point he was warned about the fraud, he continued to make the payments – likely as a result of the 'sunken loss fallacy'

- It would have been obvious to the bank had it intervened sooner that Mr S was the victim of a fraud
- Later intervention felt more of an inconvenience to Mr S who had already invested large sums with relative ease. This created a sense of acceptance by the bank regarding the legitimacy of the transactions

As both parties have now responded to the findings set out in provisional findings, I'm in a position to issue my 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.

I agree with Mr S's representative that warnings are, in some circumstances, less effective at later stages in a fraud. And I agree, in part, that a person can be less receptive to risk indicators and fraud warnings where they've already parted with large sums of money. But Mr S wasn't provided with warnings here, he was explicitly told he'd likely been defrauded.

The bank's representative removed significant doubt from the situation and recommended that Mr S direct his efforts toward recovering his existing losses. It even went one step further and blocked Mr S from being able to make any further payments to the beneficiary.

I have no reason to believe that had NatWest been provided with the same information at an earlier stage, which it likely would have, then it would have carried out the same actions for all the reasons Mr S's representative has set out in their response. And I'm not persuaded that Mr S would have acted any differently at an earlier stage after he'd been given such specific and impactful information.

I acknowledge Mr S had already transferred a large sum of money prior to being informed he was a victim of fraud, but I don't find this impacted his ability to understand what he was being told by the bank. And this didn't dissuade him from making substantial payments after. It's therefore unlikely it would have done so at an earlier stage even had he transferred little or no money at that stage.

For the reasons I've given above, and in my provisional findings, I find that had NatWest intervened sooner, Mr S likely would have continued with the payments via other means. It's therefore unreasonable to expect NatWest to reimburse him his loss.

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 S to accept or reject my decision before 5 September 2023.

Stephen Westlake
Ombudsman