

The complaint

Mr D complains that National Westminster Bank Plc (“NatWest”) did not refund a series of payment he lost to a scam.

What happened

Mr D was looking to invest in cryptocurrency, and was contacted by an individual from a firm I’ll call ‘P’. They persuaded him to open an account with a payment services provider that I’ll call ‘X’, as well as a popular cryptocurrency exchange website, Binance. P offered to open these for Mr D and asked him to provide a copy of his driving license, which he did. With this, P opened accounts with both X and Binance and provided Mr D with the log in details. He also gave P remote access to his device via an app, and linked his NatWest account to the account with X via open banking.

Mr D asked P to start investing in cryptocurrency for him and set a monthly limit of £170. However, Mr D later noticed that two large transfers had been made from his savings account to his current account with NatWest, and there was a series of transfers out:

Payment number	Date	Amount (£)
1	22/10/22	20.00
2	22/10/22	5.00
3	25/10/22	30.00
4	26/10/22	5,000.00
5	26/10/22	4,000.00
6	26/10/22	+4,000.00
7	26/10/22	5,000.00
8	26/10/22	30.00
9	26/10/22	4,900.00
10	27/10/22	5,000.00
11	27/10/22	5,000.00
12	27/10/22	5,010.00
13	27/10/22	4,000.00

Of these payments, £30,000 was sent from X to Binance, and then on to the scammer’s wallet, meaning Mr D did not have access to these funds. Payments 5 and 6 appear to be a failed payment to the X account that was returned. There was a remaining £3,990 in the X account following the scam which is due to be returned to Mr D.

Mr D reported the issue to the police and raised a fraud claim with NatWest, as he did not intend for the larger payments to be made. And he says NatWest should have contacted him prior to them being processed. NatWest issued a final response letter in which it explained that as Mr D gave permission for P to make payments from his account, there was not much more they could do. They also confirmed that the payments did not fall under the Contingent Reimbursement Model (CRM) code, which provides additional protection for victims of

scams. This is because Mr D did not make the payments himself, they were to another account in his name and the final loss did not originate from NatWest.

Mr D referred the complaint to our service. Our Investigator looked into it and agreed that the payments did not fall under the CRM code. However, they explained that NatWest still had a duty to protect its customer's account from financial harm. And they felt the fourth payment was unusual in the context of Mr D's normal account activity, so they felt NatWest should have contacted him about this payment to find out more about it. And they thought if this had happened, Mr D would have been honest, and the scam would have been revealed. So they recommended a refund of the payments from payment four onwards. As the total loss Mr D incurred was £30,000, they felt this should be the starting point for the refund.

However, the Investigator also felt Mr D should bear some responsibility for his losses, as they thought he could have done more to protect himself against the scam. This is because a basic online search of P would have revealed a warning about them on the Financial Conduct Authority (FCA) website. And Mr D shared his log in information, allowed the scammers to view his screen and open accounts for him, which are hallmarks of a scam. So, they felt a 50% reduction should apply to the refund.

Finally, they felt X should also bear some responsibility for the loss and felt both NatWest and X were equally responsible. So, they said both X and NatWest should bear 25% of the loss each, totalling £7,500. And that they should pay 8% simple interest, calculated from the date of the loss to the date of settlement.

NatWest initially disagreed with the findings but recognised the fourth payment was out of character and an opportunity to intervene may have been missed, so agreed to the refund as a gesture of goodwill. However, Mr D did not agree that he should bear some responsibility for his loss, and that at the very least, all three parties should split the responsibility equally.

As an informal agreement could not be reached, the complaint 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.

I've firstly considered whether or not the payments in question were authorised, as the Payment Service Regulations 2017 (PSRs) confirms the starting position is that NatWest is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

In this case, Mr D has confirmed he gave P a certain level of access to his accounts, and they then used open banking to initiate the payments to X, which they then used to purchase cryptocurrency. And Mr D authorised P to make transactions up to £170 from his NatWest account. The evidence also shows that for each payment made from his NatWest account, Mr D would have had to authorise it through his app, which he has confirmed he did. Though I recognise he says he was unaware of the amounts involved.

Even though Mr D did not specifically state P could make transactions above £170, by giving them permission to act on his behalf to make payments, he gave them apparent authority to make all of the payments listed above. And at no point did he rescind or take back his authority for them to act on his behalf. With this in mind, I'm satisfied all of the payments were therefore authorised by Mr D.

However, the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether NatWest did enough to try to keep Mr D's account safe.

I've considered the payments alongside Mr D's normal account activity. Having done so, I think the fourth payment of £5,000 was unusual in comparison. Mr D did not regularly make high value payments, there is one payment of £2,000 in the six months prior but that in itself is high compared to the regular activity. So, I do think the £5,000 was unusual enough to have warranted further checks by NatWest.

I note that NatWest has now accepted the recommendation of a refund from payment four onwards, though I recognise it has done so as a gesture of goodwill. As this has been agreed, and I think this is fair I see no reason to discuss it in more detail.

I've gone on to consider whether Mr D should bear some responsibility for his losses as a result of any negligence in his actions and if it is therefore reasonable for me to make a reduction in the award based on this. In doing so, I've considered whether Mr D has acted as a reasonable person would to protect himself against the loss he suffered. The test is objective but needs to take account of the relevant circumstances.

In doing so, I've considered that Mr D allowed P to access his device remotely, that he gave them a copy of his identification and allowed them to open accounts in his name. While I recognise that he has said he was not very knowledgeable about technology, I still think these actions follow the hallmark of a scam and that Mr D should reasonably have been more wary of continuing. In addition, Mr D has said he was told something was wrong with the authorisation for the payments, so had to authorise them again and again. But from the payment journey I have seen, the amounts of the payments would have been visible when he authorised them. So, I think it was possible for Mr D to see that the payments he was authorising did not match the amounts he was expecting, and this should have been a warning to him that something was not right.

With this in mind, I agree a reduction in the redress should be applied and think 50% is appropriate in this case. I've considered Mr D's comments that liability should be shared equally between all parties involved, namely Mr D, NatWest and X. However, if this case only involved NatWest and no other party, and I found Mr D was partially responsible, I would be recommending a 50% reduction. And I think this should be the case regardless of how many other parties are involved as this does not diminish the level of responsibility Mr D had as a starting point for the scam.

I do want to recognise that Mr D has been the victim of a scam and I can understand how upsetting this situation must be for him. Having carefully considered everything available to me, I do think NatWest should have intervened from the fourth payment onwards and if they'd done so they could have revealed the scam and stopped the end loss of £30,000. And for the reasons outlined above, I think Mr D should bear some responsibility for the loss due to his actions, so I think the redress should be reduced by 50% - with NatWest's liability being 25%.

Putting things right

NatWest should refund Mr D 25% of the end loss of £30,000, totalling £7,500, plus 8% simple interest from the date of the loss to the date of settlement.

If NatWest considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold Mr D's complaint in part and recommend National Westminster Bank Plc pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 December 2023.

Rebecca Norris
Ombudsman