

## **The complaint**

Mr M complains that National Westminster Bank Plc didn't do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he'd reported the scam to it.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr M came across someone claiming to work for a company I'll refer to as "F" who said he could help him to invest in cryptocurrency. The broker told him to first purchase cryptocurrency through a cryptocurrency exchange company I'll refer to as "B" and then load it onto an online wallet. Between 5 May 2022 and 13 May 2022, he made seven transfers totalling £62,000 from his NatWest account.

He complained to NatWest when he found out he'd been scammed, but it refused to refund any of the money he'd lost. It said the funds were all transferred to an account in Mr M's own name, so it wasn't part of the loss and that he should contact the cryptocurrency exchange company he paid. It also said the payments were in line with his normal account activity.

It said it places appropriate and relevant warning messages across its online banking facility to warn customers about scams and information is made available on its websites and within its branches. It also said a message is displayed on its online banking facility before making a transfer or adding a new payee and customers must confirm they are confident they have read and understood the advice and are satisfied they have taken relevant steps to ensure they haven't fallen victim to a scam.

It said transactions were genuinely made by Mr M using his secure online banking facility so there were no concerns at that time regarding the validity of the payments. And the Contingent Reimbursement Model ("CRM") code didn't apply as the payments were made to an account in his own name.

Mr M wasn't satisfied and so he complained to this service. After our investigator issued his view, NatWest offered to refund Mr M the money he lost from 12 May 2022 onwards, with a reduction for contributory negligence. But Mr M didn't accept that offer and asked for the complaint to be reviewed by an Ombudsman.

## **My provisional findings**

I explained the CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr M says he's fallen victim to, in all but a limited number of circumstances. NatWest had said the CRM code didn't apply in this case because Mr M paid an account in his own name, and I was satisfied that's fair.

I was also satisfied Mr M 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't

intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, he is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr M didn't intend his money to go to scammers, he did authorise the disputed payments. NatWest is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### *Prevention*

I thought about whether NatWest could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I'd seen, the payments were made to a genuine cryptocurrency exchange company. However, NatWest had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Mr M when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect NatWest to intervene with a view to protecting Mr M from financial harm due to fraud.

The payments didn't flag as suspicious on NatWest's systems, so I considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr M normally ran his account. All the payments were to a legitimate cryptocurrency exchange company and the first four payments were relatively low value when compared to the spending in the twelve months prior, which included some larger payments which ranged from £1,000 to £4,007. So, I didn't think NatWest needed to intervene.

However, on 11 May 2022, 12 May 2022 and 13 May 2022, Mr M made payments of £15,000, £15,000, and £20,000 which represented a significant increase in spending for the account. Our investigator had noted that he made a payment of £125,192 on 6 April 2022 which meant the final three payments weren't suspicious or unusual, but I noted this was a CHAPS payment to a solicitor's firm and the scam payments represented a significant change in the nature of the spending on the account as Mr M was paying a cryptocurrency merchant that he hadn't paid before 5 May 2022.

Further, the final three payments were significantly higher than the other, more general spending on the account and it would have been clear he was buying cryptocurrency. The payments occurred on consecutive days and there was a clear pattern of spending which wasn't replicated in any of the previous spending i.e. large, consecutive payments to a cryptocurrency merchant. Because of this I thought NatWest should have intervened on 12 May 2022 when Mr M paid £15,000 to B and that its failure to do so represented a missed opportunity to have prevented Mr M's loss from that point onwards.

I said NatWest should have called Mr M and asked him some questions around the purpose of the payment including whether there was a third party involved and if so, how he met the third party. It should have also asked whether he'd been promised unrealistic returns, whether he'd been asked to download remote access software, whether he'd made any withdrawals and whether he'd been advised to make an onwards payment from the cryptocurrency exchange.

There's no evidence Mr M was coached to lie and so I thought he'd have told it that he was being advised by a broker who had told him to make an onwards payment from the cryptocurrency exchange and that he hadn't yet made any withdrawals from the trading platform. With the responses to these questions, I thought NatWest would have had enough information to identify the investment was a scam. It should then have discussed with Mr M the nature of the checks he'd undertaken and provided a tailored scam warning.

I hadn't seen any evidence that Mr M was keen to take risks with his money and so even though there were no regulatory warnings with either the Financial Conduct Authority ("FCA") or International Organization of Securities Commissions ("IOSCO") websites, I thought he'd have listened to a very clear warning from NatWest that there were red flags present which indicated that the investment was probably a scam and decided not to go ahead with the payment. This was supported by the fact he realised he'd been scammed after discussing the investment with a family member, so I was persuaded he would have acted on a warning from NatWest.

Therefore, I thought NatWest failed to intervene in circumstances which could have prevented Mr M's loss and so said I was minded to direct it to refund the money he lost from 12 May 2022 onwards.

### *Contributory negligence*

There's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence but, in the circumstances, I didn't think Mr M was to blame for the fact he didn't foresee the risk.

He hadn't invested in cryptocurrency before and so this was an area with which he was unfamiliar. This was compounded by the sophisticated nature of the scam and the fact he wouldn't have known how to check the information he'd been given. I hadn't seen any evidence that he was promised unrealistic returns or that he ignored any clear signs that the investment was a scam and so, while there may be cases where a reduction for contributory negligence might be appropriate, I didn't think this is one of them.

### **Developments**

NatWest has indicated it has nothing further to add, but Mr M has further argued that on 9 May 2022, he made three transactions in one day for £5,000, £2,000, and £3,000, which was unusual spending for his account. And he has also asked me to review my position regarding the payment he made on 11 May 2022 for £15,000.

### **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 considered the further comments Mr M has made but I'm afraid I maintain my view that NatWest didn't need to intervene until 12 May 2022. I accept he made three payments on 9 May 2022 meaning the cumulative spend that day was £10,000. But as I've previously explained, the historic spending on the account included several larger payments and, critically, a payment of £125,192 on 6 April 2022 which meant the spending on 9 May 2022 wasn't so unusual that NatWest needed to intervene.

This same spending history meant that I was also satisfied that NatWest didn't need to intervene on 11 May 2022 when Mr M paid £15,000 to B, which is a legitimate cryptocurrency exchange and it was only the fact he made another large payment the following day that persuaded me that NatWest ought to have stepped in to ask him about the payments. This is because I was satisfied that the two large payments on consecutive days represented a significant change in the spending on the account to the extent that it outweighed the spending history that had, up to that point, meant the scam payments weren't unusual.

I understand Mr M will be disappointed and I have very carefully considered all of the additional comments he has raised but, for the reasons I have explained, I can't fairly ask NatWest to refund and of the money he lost to the scam before 12 May 2022.

### **My final decision**

My final decision is that National Westminster Bank Plc should:

- Refund £35,000.
- pay 8% simple interest\*, per year, from the respective dates of loss to the date of settlement.

\*If National Westminster Bank Plc deducts tax in relation to the interest element of this award it should provide Mr M with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 January 2024.

Carolyn Bonnell  
**Ombudsman**