

The complaint

Mr K complains that National Westminster Bank Plc won't refund the money he lost after he fell victim to an Authorised Push Payment (APP) scam.

What happened

Mr K says family members told him about a cryptocurrency investment opportunity. And, after doing some research on the investment company, he made a payment of £200 from his NatWest account on 12 November 2023.

Mr K says he realised he'd been scammed when he was unable to withdraw any money and staff at the company had disappeared and its app was no longer available on the app store.

Mr K contacted the police, and he says he was told to contact his bank as he would be able to get a refund if he had been scammed. But when he contacted NatWest, it said the Contingent Reimbursement Model (CRM code) didn't apply in his case as the payment had been transferred to an account in his own name. And this also meant his NatWest account wasn't 'the point of loss'. So, it didn't think it had done anything wrong.

Mr K referred the complaint to us and one of our investigators looked into it. But he didn't uphold it. He said Mr K sent the payment to an account in his own name held with a legitimate cryptocurrency company which meant the CRM code didn't apply. And he didn't think that the amount of the transaction was significant enough to warrant any intervention by NatWest.

Mr K didn't accept this outcome. In summary Mr K said he had attempted to make the payment via two other banks where he held accounts and both banks prevented him from making the payment. And he questioned why NatWest didn't consider the £200 transaction unusual given he hadn't made any other withdrawals since the account had been opened in September 2023. He also said he was aware of other consumers who had invested in the same scam had received refunds.

The investigator considered what Mr K had said but he didn't think this altered the outcome he'd reached in the particular circumstances of Mr K's complaint.

Mr K said the investigator hadn't explained why his payment wouldn't have appeared suspicious to NatWest and he asked for his complaint to be referred to an ombudsman. So, his complaint has been passed to me.

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.

Having done so, while I'm sorry to hear that Mr K was the victim of a scam and lost money as a result, I'm not upholding this complaint and for largely the same reasons as our investigator. I realise this will come as a disappointment to Mr K, but I can only direct NatWest to refund Mr K's loss if it can fairly and reasonably be held responsible for it.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr K has fallen victim to, in all but a limited number of circumstances. One of those circumstances is when the payment is made to account in the consumers own name - which is what happened here. So, I'm satisfied that the CRM code didn't apply in this case.

I'm also satisfied Mr K 'authorised' the payment for the purposes 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, Mr K is presumed liable for the loss in the first instance.

And 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've thought carefully about whether I can fairly say that it should have been clear to NatWest that the payment Mr K made carried a significantly heightened risk of fraud, such that it would be proportionate for it to intervene and make further enquiries about it.

Here NatWest didn't have any payment history to compare Mr K's payment to – it was the first payment he'd made from the account. So, NatWest would have had difficulty identifying what was and wasn't usual account activity for Mr K.

However, the payment wasn't a particularly significant amount in relation to the balance Mr K held in the account. And while cryptocurrency exchange companies are commonly used by scammers, buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payment Mr K made was made to genuine cryptocurrency exchange company.

Overall, I think it's reasonable for NatWest to take into account a range of factors when deciding whether to intervene on a payment. Although cryptocurrency carried some additional risk, I don't think it would be reasonable to expect NatWest to question a single payment of such modest value when compared to the account balance. That would not be a proportionate response to the risk. And there was nothing that indicated that this payment was, or could be, related to a scam at the time the payment was authorised by Mr K.

I appreciate that Mr K would like to know exactly what constitutes an unusual transaction and why his payment didn't trigger NatWest's fraud detection systems. But this isn't the kind of detail I would expect NatWest to share with customers. A bank's fraud detection systems will be most effective when the triggers or thresholds it uses are not widely known, to limit the ability of scammers to circumvent those triggers.

I note Mr K has said two other banks prevented him making this transaction before he attempted to make it via his NatWest account. And that he is aware of other consumers that have been a victim of this same scam and have received refunds. But I can only consider the individual circumstances of this case. And for the above reasons, I'm not persuaded NatWest did anything wrong here.

Recovery

From what I've seen Mr K transferred the money to an account in his name and from there he transferred the money to the scammer. In these circumstances, I'm satisfied NatWest couldn't have recovered the money.

In conclusion, I have a great deal of sympathy with Mr K being the victim of a scam. But it would only be fair for me to direct NatWest to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. It follows that I will not be asking NatWest to take any further action in respect of this complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 May 2024.

Sandra Greene
Ombudsman