

Complaint

Mr M is unhappy that National Westminster Bank Plc (NatWest) didn't refund him after he told it he'd fallen victim to a scam.

Background

In 2022, a friend of Mr M's told him about an investment opportunity. They had been investing their money with a private individual who promised that they could earn generous returns through a range of investment strategies. He earned some returns towards the end of that period. However, it is now alleged that those payments were made using funds deposited by new investors. Mr M says that he's fallen victim to a Ponzi scheme. That allegation is now the subject of an investigation by the police.

Mr M used his NatWest account to make the following payments:

1	6 February 2022	£500
2	21 March 2022	£700
3	28 September 2022	£80
4	28 September 2022	£3,200
5	28 November 2022	£138

Once Mr M suspected he'd fallen victim to a scam, he notified NatWest. It didn't agree to refund his losses. It said that it had processed Mr M's payments, as requested. It didn't think there was anything to suggest an error on the bank's part.

Mr M wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. She said that NatWest ought to have had concerns about payment 4 in the table above. It shouldn't have processed that payment without first making enquiries with Mr M to satisfy itself that he wasn't at risk of financial harm due to fraud. If it had done so, she was persuaded that it would've been able to prevent his subsequent losses.

However, she also considered whether it was fair and reasonable for Mr M to bear some responsibility for his own losses. She was persuaded that he'd made these payments without a reasonable basis for believing that the investment was a legitimate one. She therefore concluded that it was fair and reasonable for NatWest to make a 50% deduction from any compensation payable to Mr M.

NatWest accepted the Investigator's opinion and agreed to settle the complaint in line with her recommendation. Mr M didn't agree. He said, via his professional representatives, that he did act reasonably. He spoke to the person who was going to manage his money and they seemed credible and knowledgeable. He said that there was a professional looking

website which also meant he was confident he was dealing with a trustworthy company. And finally, the returns he received cemented his confidence that this was a legitimate operation.

Since Mr M disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. NatWest is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code").

It can only apply here if what happened to Mr M meets the CRM Code's definition of an authorised push payment (APP) scam. Broadly summarised, this means that Mr M would need to have transferred his funds for "*what [he] believed were legitimate purposes but which were in fact fraudulent.*"

There remains some uncertainty on that point – i.e., it's a currently unresolved question whether Mr M was a victim of an APP scam or simply has a private civil dispute with the person he believed was managing his money. For the avoidance of doubt, I don't make any finding either way. Enquiries on that point remain ongoing. Nonetheless, I have considered whether I could fairly ask NatWest to pay him further redress if I was persuaded that this was a scam. After considering the evidence carefully, I'm not persuaded that I could.

The CRM Code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams unless there's a valid exception to reimbursement. The most relevant exception here is where "*the customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate.*"

The Investigator said that Mr M made these payments without a reasonable basis of belief that this was a legitimate investment. I think that's a fair and reasonable conclusion. The returns he was promised were unrealistic. While they weren't as extraordinary as some of the returns we've seen on other investment scam cases, he was still being told that he could earn an annual return of over 100% without, it seems, any meaningful risk to his capital. Mr M's representative has pointed out that, under the CRM Code, there is no default expectation that customers must carry out certain checks before making payments. That's true, but the fact that Mr M was being offered such unrealistic returns ought to have prompted him to take more care.

Mr M says that he was persuaded that it was legitimate based on his interactions with the individual managing the investment. They seemed to have a lot of technical knowledge and generally came across as professionally credible. Unfortunately, Mr M hasn't been able to provide any evidence of his communications with them. In a similar vein, I understand that there were documents that were relevant to this investment agreement but that he can't provide them either. In the absence of that evidence, it's difficult for me to now say that these communications could've counterbalanced the clear risk associated with the promised returns.

Finally, it's been suggested that Mr M was persuaded that this was a legitimate investment

because of the returns that he earned. But from the evidence he's shown me, he didn't receive any returns until early 2023. The fact that he appeared to earn returns can't, therefore, have been a factor in his decision making here.

Final decision

For the reasons I've explained above, I uphold this complaint in part. If Mr M accepts my final decision, National Westminster Bank Plc should refund 50% of payments 4 and 5, less the returns that were paid out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 October 2024.

James Kimmitt
Ombudsman