

The complaint

Mr E complains that National Westminster Bank Plc (NWest) won't refund money he lost in an investment scam.

What happened

What Mr E says:

Mr E's complaint has been put to us by a third-party claims firm. He says he made ten payments totalling £4,517 from two of his NWest accounts to a crypto wallet in his name, and then to a firm ('firm A') to buy crypto currency. No other details have been provided by Mr E, e.g. how the scam came about, how he was contacted, how he came to make the payments and why, and what evidence he has of his crypto investments.

The payments were:

Date	Account	Payment	Amount
15 March 2021	1	Faster payment to Mr E's crypto wallet	£10
15 March 2021	1	Faster payment to Mr E's crypto wallet	£240
15 March 2021	1	Faster payment to Mr E's crypto wallet	£240
16 April 2021	1	Faster payment to Mr E's crypto wallet	£400
4 August 2021	2	Faster payment to Mr E's crypto wallet	£220
9 August 2021	2	Faster payment to Mr E's crypto wallet	£230
20 October 2021	2	Faster payment to Mr E's crypto wallet	£3,000
6 June 2022	2	Faster payment to Mr E's crypto wallet	£150
8 June 2022	2	Faster payment to Mr E's crypto wallet	£10
8 June 2022	2	Faster payment to Mr E's crypto wallet	£17
Total			£4,517

Mr E says firm A turned out to be a scam and he's lost the money. He says he didn't get any warnings from NWest. The Financial Conduct Authority (FCA) published a warning about firm A in December 2019, so the bank should've known about it. No warnings were given by the bank. Mr E was vulnerable at the time as he was an inexperienced investor.

He says NWest should refund the money, plus interest at 8% per annum and compensation of £1,000.

What NWest said:

Mr E complained to NWest in March 2024. The bank didn't refund any money and said:

- Mr E didn't report the scam to the bank when it happened.
- The payments were sent to an account in Mr E's name (his crypto wallet) and then to firm A – and that was when the point of loss occurred, not when Mr E made the payments from NWest.
- Mr E properly authorised the payments.
- There were warnings on NWest's website about the various types of scam to look out for. If Mr E followed that advice, it's unlikely he would have fallen for the scam.
- The payments involved didn't trigger a warning in NWest's fraud systems.

Our investigation so far:

Mr E brought his complaint to us and our investigator didn't uphold it. She said:

- NWest didn't need to intervene as the payments were of low value, infrequent, and in keeping with Mr E's normal spending profile.
- At one point, Mr E was shown a scam warning, but went ahead anyway.

Mr E asked that an ombudsman look at his complaint. He said (through his advisors):

- Other people are claiming back low values.
- He hadn't made any other payments associated with crypto currency before.
- The scammer told him to ignore any warnings from the bank.
- He was told to ignore what the FCA said about firm A.
- He didn't get any warnings from NWest.

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'm sorry to hear that Mr E has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr E didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider NWest should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether NWest acted fairly and reasonably in its dealings with Mr E when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary – and in this case, the payments were made to Mr E's own account – his crypto wallet.

The important matter here is whether these were payments that NWest might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Mr E about them.

I looked at Mr E's account history with NWest. On the two accounts concerned, he did make similar payments leading up to the scam:

Account 1:

March 2021: £464.
 December 2020: £600.
 November 2020: £1,631.
 October 2020: £900.

Account 2:

June 2021: £500, £146.
 March 2021: £1,000, £1,000.
 February 2021: £874.
 January 2021: £500.
 December 2020: £495.

So, the payments to Mr E's crypto wallet were typical of his normal account activity.

I also have to bear in mind that there's a balance to be made: NWest has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think NWest acted reasonably in processing the payments.

I can also see that the payments to firm A were made over a period of 15 months. This isn't typical of a scam – where payments are made in a short period of time, usually over a few days.

So here, on balance, I don't consider NWest needed to reasonably intervene in the payments made by Mr E.

I can see that there was a warning about firm A published by the FCA in December 2019. Mr E argues that because of that, NWest shouldn't have made the payments. But I can only expect NWest to have done that if they'd intervened and spoken to Mr E – and asked him where he was sending the money onto from his crypto wallet.

And as I've said, I don't think it's reasonable to have expected NWest to have intervened in any case. And - we do expect consumers to make their own reasonable inquiries. Mr E could equally have searched for firm A and seen the warning – and there were also some very poor 'Trustpilot' reviews of firm A online.

Mr E has argued he was vulnerable as he was an inexperienced investor. I've considered this point – but I can only expect NWest to have taken this point into consideration if I think it's reasonable for the bank to have intervened and asked Mr E what he was doing and what his investment experience was – and in this case, I don't think the bank needed to do so.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether NWest took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. I couldn't see the bank had done so.

But given that the scam took place in 2021 and 2022, and Mr E complained to NWest in March 2024, there was little point - as normally in such scams, funds are removed from the recipient bank immediately. So I don't consider NWest needed to contact the bank to try to get the money back.

Therefore, in summary and for the reasons I've explained, I can't reasonably hold NWest responsible for Mr E's losses.**(continued)**

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 30 July 2024.

Martin Lord
Ombudsman