

**The complaint**

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

**What happened**

*What Mr B says:*

Mr B is represented by a third-party claims firm.

He says he was introduced to an investment scheme via some friends – who said they'd made good money as a result. The scheme was to invest money in crypto currency through an app.

Mr B was sceptical at first as it sounded too good to be true, but he then saw how much money his friends were making and he agreed to put his money in. He says he did research online and found no concerns or issues with the scheme. He made the following payments to a crypto wallet in his name, and from there, the funds were transferred to the scammers.  
**(continued)**

<b>Date</b>	<b>Payment</b>	<b>Amount</b>
26 October 2023	Faster payment – crypto wallet	£250
1 November 2023	<i>Faster payment – rejected</i>	<i>£2,000</i>

1 November 2023	Faster payment – crypto wallet	£1,000
8 November 2023	Faster payment – crypto wallet	£1,000
10 November 2023	Faster payment – crypto wallet	£1,000
13 November 2023	Faster payment – crypto wallet	£200
20 November 2023	Faster payment – crypto wallet	£1,000
21 November 2023	Faster payment – crypto wallet	£20
21 November 2023	Faster payment – crypto wallet	£500
23 November 2023	Refund	(£13.63)
<b>Total</b>		<b>£4,956.37</b>

Then, after a month or so the app closed down. The creators of it claimed there had been a cyber-attack and the funds had been stolen – all of which were lies, and the scheme was a scam. His friends also lost their money.

He says NWest should've warned him about the scheme – he didn't get any warnings or calls/messages of any kind. He says NWest should refund he's money he's lost.

*What NWest said:*

NWest didn't uphold Mr B's complaint or refund any money. The bank said they'd acted in accordance with their regulatory and legal obligations. The payments were properly authorised by Mr B. They place appropriate warnings about scams on the bank's website. A message is displayed in online banking to warn customers about the types of scams being seen – before a customer makes a payment or adds a new payee.

If a payment matches a known fraud trend, a security check will be generated. There were no such concerns in the case of Mr B.

*Our investigation so far:*

Mr B brought his complaint to us. Our investigator upheld it and said:

- NWest rejected a payment for £2,000 on 1 November 2023.
- And then, when Mr B made further payments for lower amounts after that – NWest should've been on notice that he was making payments to a crypto currency exchange. So, the bank should've held the further payments and contacted Mr B about them.
- But she also said that Mr B should bear 50% of his losses as he didn't carry out sufficient research – for example, there were two negative articles from the USA in September 2023 about the scheme being a scam. And to rely on the word of friends wasn't sufficient due diligence.

NWest didn't agree. The bank said:

- The first payment for £2,000 was blocked in line with the bank's policy to decline all crypto – related payments of £2,000 and over. On review, the bank said there weren't any messages about the decline – but Mr B would've simply seen the payment was declined.

- The bank said Mr B then likely made payments of a lower amount in order that they'd go through.
- Mr B had made similar payments from his account on a regular basis, so the scam payments weren't unusual.
- But NWest said that even though they didn't agree with the investigator, they would refund Mr B 50% of the payments as a gesture of goodwill in order to close the complaint.

Mr B (through his advisors) said there shouldn't be a deduction for contributory negligence on the basis of two articles. He said he did a lot of online research.

Mr B therefore asked that an ombudsman look at his complaint, and so it has come to me to do that.

*I reached a provisional decision which disagreed with the investigator's view and said NWest didn't need to do anything:*

It is important to say at the outset that I've looked at this complaint afresh and reached a different outcome – that is our process if one of the parties (Mr B in this case) doesn't agree. I realise Mr B will be disappointed with this as I am proposing there will be no redress.

I'm sorry to hear that Mr B 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 B 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 B 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 B's own account – his crypto wallet.

The first consideration of any scam complaint is whether these were payments that NWest might reasonably have considered unusual, and therefore whether they should've held or stopped some or all of the payments and contacted Mr B. I say this as we can't expect banks to stop all payments of any value – because it would cause unreasonable disruption to the payments system and to legitimate payments.

I looked at Mr B's account history with NWest. And I don't think the payments were unusual for him. For example, I can see he made regular payments of a similar amounts in the months leading up to the scam payments in question:

*October 2023:* £400, £400, £300, £300, £500, £750, £838.

*September 2023:* £300, £600, £300, £400, £657, £400.

*August 2023:* £657, £400, £1,000, £500, £500, £1,000, £436, £800, £800.

*July 2023:* £500, £396.

*June 2023:* £1,395, £680, £634, £495, £1,000.

*May 2023:* £2,051, £600, £500, £400, £500, £450, £480, £500, £500.

There were also many other payments of a lower value.

And while I accept the fraudulent payments were a lot of money to Mr B, they were in fact fairly low value ones. There was also nothing else about the payments that ought reasonably to have concerned NWest.

And - there's a balance to be struck: 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 considered our investigator's point about the effect of the declined payment of £2,000. The bank told us it was declined as the policy of the bank was simply to decline all payments for that amount (and over) to crypto payees. But I don't think that placed an obligation on the bank to then decline to agree to the payments for lower amounts after that.

And I also noted that the payments were spread out over three weeks. If they had been made rapidly in succession, there may be an argument to say NWest should have intervened, but that wasn't the case.

So, I'm persuaded to say the bank didn't need to intervene or provide Mr B with any warnings as a result.

I noted the view that Mr B didn't carry out enough research or due diligence - but I make no comment on that as that is only a consideration if I was of the view that NWest needed to intervene and therefore should refund the money Mr B has unfortunately lost. And this provisional decision sets out that I don't think that bank is liable to refund any of the money in this case.

I know Mr B will be disappointed by this provisional decision – but having fully considered his complaint, I'm satisfied that this outcome is a fair and reasonable one.

### Responses to the provisional decision:

NWest agreed with it, but Mr B (through his advisors) didn't. Mr B said (in summary):

- He found my provisional decision 'bewildering'. He is at a loss as to how we can reach two different decisions. He said there had been a 'U turn'.
- NWest had an obligation to protect Mr B from financial harm – which the bank did by blocking the payment for £2,000.
- The bank was therefore well aware of the risks associated with crypto payments, but rather than blocking all payments to crypto related firms, then allowed Mr B to make lower value payments, without contacting him.
- Further intervention would have prevented Mr B from making the payments of £1,000. The further payments were a red flag.
- NWest would have recognised that the lower payments of £1,000 were made to avoid the previous bar of £2,000. So, NWest's policy of blocking at a level of £2,000 is ill conceived and offers no protection to victims making smaller payments.
- So, if Mr B made 200 payments of £10, intervention is not needed – that doesn't make sense.
- NWest didn't protect Mr B from harm as they should have - in line with the Consumer Duty.
- Mr B repeated that he did a lot of research into the investment firm.

I now need to consider these points and make 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.

Let me say at the outset that there hasn't been a 'U turn'. Mr B's advisors will be well aware that when Mr B didn't agree with the investigator's view and ask for an ombudsman's decision – that his complaint is looked at afresh and in its totality. That can mean that a different decision is reached – as I explained in the provisional decision. I can see that this must be disappointing for Mr B, but that is our process.

I have reviewed Mr B's complaint and the further submissions again and I'm afraid to say that my final decision is unchanged from the provisional decision.

An important point I considered in reaching the provisional decision was the fact that NWest said the payment of £2,000 was blocked because of its policy to block all crypto-related payments at or above that level. It wasn't a result of a concern that Mr B himself was at risk of harm – anyone doing the same would have had their payments blocked.

What that means is – that I don't think it is then reasonable to expect NWest to flag any further payments made by Mr B at a lower level (and being crypto related) as being high risk and warranting intervention. That I think would place an unreasonable duty on the bank. And it would mean that effectively all crypto related payments are blocked by the bank – and NWest will have very many legitimate crypto related payments being made by its customers – and it's not reasonable or workable (or fair to those customers) that they are all blocked.

And as the provisional decision said - we cannot expect NWest (and indeed all banks) to stop low value payments – as the payment system would be badly affected if that were the case. And as the provisional decision noted – the payments of £1,000 were spaced apart

over 20 days, so that didn't look like a typical scam pattern – where payments are made in rapid succession.

I agree that banks have a duty to protect customers under the Consumer Duty – but that is one consideration we apply in assessing complaints of this nature. We apply a 'fair and reasonable' test – including the Consumer Duty but also taking into account the law, regulators' other rules and guidance, relevant codes of practice and good industry practice.

I hear what Mr B says about the research he did into the investment form – but that inky comes into account if we were upholding his complaint and were considering a deduction from the refund, which isn't the case.

I appreciate how disappointing this is for Mr B, but I am not asking NWest to do anything here.

### **My final decision**

I do not uphold this complaint.

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

Martin Lord  
**Ombudsman**