

The complaint

Mrs B is unhappy with several aspects of how National Westminster Bank Plc (“NatWest”) handled a scam reimbursement claim that she raised.

What happened

Mrs B received a text message which appeared to be from NatWest asking her to confirm whether a pending card payment had been made by her or not. Mrs B hadn’t made the payment, so she called the number provided on the text message and spoke with a person whom it’s now understood was a scammer. The scammer explained to Mrs B that she would need to authorise the pending payment so that the payment completed before the payment amount could be reimbursed back to her account. As Mrs B believed she was talking to a genuine representative of NatWest, she authorised the payment as instructed.

Shortly afterwards, Mrs B realised she’d been the victim of a scam. She contacted NatWest to report the scam. But NatWest were unable to stop the money leaving her account, and they declined Mrs B’s reimbursement claim because Mrs B had authorised the payment herself. Mrs B wasn’t happy about this, so she raised a complaint.

NatWest responded to Mrs B and reiterated that they didn’t think they should be held responsible for any loss that Mrs B had incurred such that any reimbursement to Mrs B from them was merited. However, NatWest did accept that they could have provided better service to Mrs B regarding her fraud claim, including that they could have more clearly explained their reasons for denying the claim to her. NatWest apologised to Mrs B for this, and they made a payment of £80 to her as compensation for any trouble and upset the poor service she’d received from them may have caused.

Mrs B wasn’t satisfied with NatWest’s response, so she referred her complaint to this service. One of our investigators looked at this complaint. But they didn’t feel that NatWest should be instructed to reimburse Mrs B as she would like. And they felt that the £80 NatWest had paid Mrs B regarding the service issues she’d experienced already represented a fair outcome to that aspect of Mrs B’s complaint. Mrs B remained dissatisfied, so the matter was escalated to an ombudsman for 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.

Having done so, I’d like to begin by confirming that this service isn’t a regulatory body or a Court of Law and doesn’t operate as such. This means that it isn’t within my remit here to declare that NatWest have acted in a non-regulatory or unlawful way.

Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the circumstances and factors of a complaint into consideration.

It isn't disputed that Mrs B was the victim of a scam here or that she's incurred a financial loss as a result. But the question I must ask – regarding the fraud claim that Mrs B raised with NatWest – isn't whether Mrs B was scammed, but rather whether NatWest should have reasonably understood that Mrs B may have been in the process of being scammed, during the time the scam was taking place, such that they could potentially have acted in a way which may have prevented the scam from being successful. And also whether NatWest could have recovered the money for Mrs B after the scam had occurred.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And in this instance, it's clear that Mrs B did authorise the payment in question – albeit having been deceived into doing so by the scammer.

However, where the customer made the payment because of the actions of a scammer, it may sometimes be fair for the bank to reimburse the customer even though they authorised the payment. This can be the case if the payment in question was out of character with how the account holder had used their account in recent times, and if it's felt the bank should have recognised this and potentially intervened in some way – possibly, by speaking with the customer and asking them about the payment – before allowing the payment to complete.

But I don't feel there was anything in the nature of the payment that should reasonably have given NatWest cause for concern here. This is because there were several similar sized payments that were legitimately made by Mrs B in the months leading up to the scam. And given these similarly sized past legitimate payments, I don't feel that the payment Mrs B authorised to the scammers should have been considered as being potentially suspicious by NatWest such that they should have intervened before allowing the payment to complete.

I'm aware that Mrs B feels that because she contacted NatWest to report the scam at a time when the payment was still showing as pending in her account that NatWest should have been able to stop the payment from completing at that time. But NatWest have confirmed that they're unable to cancel a payment once it's been approved – even while the payment shows as pending. This is because the pending status is only in place while the process to complete the payment between NatWest and the merchant to which the payment was made is completed. And this process can't be stopped once the payment has been authorised.

I've also considered whether NatWest could have done more to try to recover the money for Mrs B once they'd been made aware of the scam by submitting a chargeback claim. But having done so, I don't feel that such a claim would have been successful. This is because a chargeback claim can only be made in line with the chargeback scheme rules as set by the card provider – the company whose logo is on the card.

In this instance, because Mrs B's claim was that she'd been scammed but had authorised the payment, there wasn't any avenue available within the chargeback scheme rules that would have allowed for a successful chargeback claim. This is because while the chargeback rules did allow for claims when a customer had been scammed, claims of this type could only be successful if the customer hadn't authorised the payment. And a bank such as NatWest isn't expected to submit a chargeback claim in instances where they don't feel the claim has any reasonable possibility of being successful – as was the case here.

Given that Mrs B made the payment by credit card, I've also thought about whether a section 75 claim may have been successful here. A section 75 claim allows a credit card holder to make a claim against their credit account provider to get their money back if a retailer or trader doesn't provide the service it promised to provide, and the rules surrounding such

claims include that there must be a valid debtor-creditor-supplier (DCS) chain, such that the debtor has a relationship or agreement with the supplier.

In this instance, the DCS chain would be Mrs B, NatWest, and the merchant which provided the travel money accordingly, and if the transaction in dispute had involved only these three entities, then a section 75 claim may have been appropriate. But there was an additional entity in the instance – the scammer. And because of the deception of the scammer, it seems clear that Mrs B (the debtor) didn't have any kind of direct relationship or agreement with the supplier who provided the travel money. As such, the valid DCS chain required for a section 75 claim appears to have been broken by the presence of the scammer.

Additionally, regarding the transaction in question, the service being provided was the provision of travel money, and that service was provided. And while this service was provided to the scammer, and not to Mrs B, this wasn't apparent to the service provider when the service was provided, at least in part because Mrs B had authorised the payment. And for these reasons, I don't feel that a section 75 claim would have been successful.

Mrs B has also explained that she doesn't feel that NatWest gave her all the relevant information to enable her to try to recover the money herself from the merchant to which the payment had been made. Specifically, Mrs B has explained that she feels that if NatWest had told her the exact branch of the merchant the money had been paid to, she would have been able to contact that branch and potentially stop the scam.

But the merchant in question here was a major UK retailer, with many branches nationwide. And NatWest wouldn't know exactly which branch of the merchant the money was being paid to, or what service it was being paid for, from the payment details that they received. Rather, NatWest would only know that Mrs B had authorised a payment of a specific amount to the merchant in question. And so, I feel it was reasonable for NatWest to refer Mrs B to the merchant themselves to try to obtain this information.

Additionally, given that it's now understood that Mrs B was deceived into authorising a withdrawal of travel money by the scammer – a transaction that would have been completed relatively quickly – I feel it's unlikely that Mrs B would have been able to act in time to have prevented the scam from completing, even if NatWest had been able to provide her with the specific information that she wanted.

Finally, Mrs B has complained about the service she received from NatWest when reporting the scam to them, including that she feels that NatWest didn't sufficiently explain why her fraud claim had been declined to her. NatWest have acknowledged that they should have done better in this regard, and they've apologised to Mrs B for this and made a payment of £80 to her as compensation for any trouble and upset this poor service may have caused.

Matters of compensation can be subjective. But I feel that the £80 NatWest have paid Mrs B for the service issues she encountered is a fair amount, and I confirm that it's commensurate with what I may have instructed NatWest to have paid Mrs B, had they not already done so. I say this because the £80 payment is solely for the upset Mrs B experienced from not being kept up to date with what was happening with her claim and from it not being clearly explained to her why her claim had been declined in the first instance - and isn't in relation to the declining of the claim itself, which as explained above, I feel was fair.

All of which means that I feel the response to Mrs B's complaint that NatWest have already issued – including the declining of Mrs B's fraud claim and the payment of £80 compensation for poor service – already represents a fair resolution to what's happened here. And it follows from this that I won't be upholding this complaint.

I realise this won't be the outcome Mrs B was wanting, but I hope she will understand, given what I've explained, why I've made the final decision that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 31 July 2023.

Paul Cooper
Ombudsman