

## **The complaint**

A company, which I'll refer to as W, complains that National Westminster Bank Plc (NatWest) won't refund a payment it didn't make. Mr A, who is a director of W, brings the complaint on W's behalf.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my 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.

In September 2023, I issued a provisional decision explaining why I intended to uphold W's complaint. Both sides accepted my findings, so I see no reason to depart from what I've said. For completeness, I've explained my reasons again below.

Having done so, I intend to uphold the complaint for these reasons:

- The starting position under the Payment Services Regulations 2017 (PSRs) is that W isn't liable for payments it didn't authorise. So I've firstly considered whether this disputed payment would be regarded as authorised under the PSRs.
- These explain that to consider a payment authorised, W must have given its consent to it – and that consent must have been in the form, and in accordance with the procedure, agreed between it and NatWest.
- NatWest hasn't provided us with the applicable terms and conditions from when the disputed payment happened to determine the agreed form and procedure. So I've considered the practical steps that needed to happen for this disputed debit card payment.
- It's my understanding that Mr A would've needed to enter W's card details on the merchant's website, and when prompted, enter a code received by text.
- It's not been disputed that fraudsters used Mr A's stolen card details on the merchant's website and entered the code they tricked him into sharing by saying it would approve a refund for a fraudulent payment.
- It follows that I can't reasonably say that Mr A gave his consent to the payment using the agreed form and procedure.
- I've also considered whether Mr A could reasonably be said to have given permission for someone else to go through the agreed form and procedure on his behalf.

- Mr A acknowledged that he shared a code and replied to a fraud alert. But as I've said, he was tricked into doing this, thinking he was speaking to PayPal and he'd get a refund for fraud. And it seems the fraudsters had stolen W's card details prior to the call. Given this deception, I don't think I could reasonably conclude he gave permission for someone else to consent to the payment. It follows that I'm satisfied this payment was unauthorised in line with the PSRs.
- I've gone on to consider whether, in line with the PSRs, NatWest has shown there's a reason W shouldn't be refunded. While it's not explicitly stated a reason, it's pointed out how Mr A shared a code with fraudsters. So I've looked at whether he failed with gross negligence to comply with the terms of the account and keep W's personalised security details safe – something which, if proven, would mean W wouldn't be entitled to a refund under the PSRs.
- To assess this, I've reflected on the circumstances on the scam. Mr A received an email that appeared to come from PayPal, asking him to call a number if he didn't recognise the payment. When he did, they said his account had been compromised – he recalled they knew lots of personal and sensitive information and a message appeared on his PayPal account when he logged on. So I can see why he trusted the call was genuine and why he became concerned for the safety of W's money. I think lots of people would've done in these convincing circumstances.
- Mr A recalled he was instructed to share a code from a message he'd receive from NatWest – this was to refund him for fraudulent payments. I've noted this message said not to reveal it, as well as how it confirmed a purchase and how only a fraudster would ask for it. But Mr A explained he didn't read this properly at the time – instead he trusted the instructions from who he thought was PayPal.
- I'm mindful Mr A wasn't an expert in a fraud – so I can how it seemed plausible he needed to share the code for a refund. And I recognise Mr A was acting in the heat of the moment with someone he was cleverly duped into trusting – so I can also understand how he simply focused on and shared the code. Indeed, I note it's underlined and in another colour on his phone, making it easier to spot.
- I recognise Mr A also replied 'Y' to a message asking him to confirm whether he just made a transaction. But he's pointed out that the message also said that replying will not cause the transaction to go through. In the circumstances when Mr A thought he was following PayPal's instructions for a refund, I can see how he could have thought a 'transaction' referred to a refund – and how the message's reassurance that it wouldn't make money leave meant it didn't ring alarm bells.
- Of course, this isn't to say Mr A acted perfectly reasonably. Indeed, it's possible to call these actions careless. But, based on what I've seen, I've not been persuaded that he acted with very significant carelessness to conclude that he failed with gross negligence.
- It follows that, in line with the PSRs, I don't consider W can be fairly held liable for this unauthorised payment and NatWest needs to put things right – by refunding W's losses from the payment alongside 8% simple interest per year to compensate it for the time it's been out of pocket.
- I've also got questions about whether NatWest should've done more than simply message Mr A, given it had concerns about the payment. Afterall, it's difficult to see whether the message does much more to reassure NatWest than the message with the code. But given I'm minded to uphold this complaint under the PSRs, I've not

explored this further.

### **My final decision**

For the reasons I've explained, I intend to uphold W's complaint and tell National Westminster Bank Plc to:

- Pay W the total of the unauthorised payment, less any amount recovered or refunded – I understand this to be £12,110.82.
- Pay 8% simple interest per year on this amount, from the dates of the unauthorised payment to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 22 November 2023.

Emma Szkolar  
**Ombudsman**