

The complaint

Mrs E complains that National Westminster Bank Plc won't reimburse the money she says she lost to a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In 2021 Mrs E made a series of payments from her NatWest account. At the time she believed she was settling invoices from a building firm 'N'. She'd contracted with N (who had been recommended to her by an architect) to do work at her home. The payments were made between May and July 2021 and totalled around £66,500 and were paid to an account in the name of N's director. Between July and August 2021 further payments totalling around £50,000 were also sent from Mr E's (Mrs E's husband) account with another bank.

In October 2021 Mrs E concluded she'd been the victim of a scam – she reported this to NatWest and the police. Ultimately NatWest said they were unable to recover or return any funds, they considered it to be a civil dispute between Mrs E and N. Mrs E complained and when NatWest maintained their position, she referred her complaint to our service.

One of our Investigators didn't recommend it should be upheld. In summary she thought the conclusion NatWest had reached was reasonable. Mrs E disagreed and asked for an Ombudsman to review her complaint.

In June 2023 I issued a provisional decision in which I said:

"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'm intending to reach the same overall outcome as our Investigator. But as I'm providing some additional reasoning, I'm issuing this provisional decision to give everyone a further opportunity to comment. I'm also aware of a linked complaint that Mr E has against another bank. But this decision is solely in relation to NatWest's actions. It isn't in dispute that Mrs E authorised the payments that left her account. But she alleges that she has been the victim of an Authorised Push Payment (APP) scam and that N's intent from the start was to deceive her.

NatWest are also a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM code does not apply to "private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

So, I need to decide whether NatWest acted fairly, when concluding that this amounted to a civil dispute and not a scam. I'm intending to find that they did, and I'll explain why.

Whilst I can quite understand why Mrs E feels that N has scammed her, there is a high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006). And there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

Of particular relevance to this are the pictures that Mrs E has provided. These show building work in progress. Parts of walls have been knocked through and I can see that some blocks have been laid. There also appears to be a trench dug (presumably for foundations). I acknowledge Mrs E says the work was done poorly or incorrectly, but that isn't, in itself, evidence of this being a scam. There is also some evidence of materials and a skip having been delivered to the site as well as an excavator.

I'm also mindful that N are a limited company, registered on Companies House and that invoices which included reasons for each payment were provided. I also understand there was a contract drawn up for the works and that the quote received by Mrs E was in line with similar quotes received. Often, where the intention is to be dishonest from the start, then a quote will be very competitive to secure the work.

The payments which include those made from Mr E's account, took place between May and August 2021 (around three and a half months in total). Mrs E says she had to make payments for materials due to extended lead times as a result of Brexit and Covid. And they continued to do so as they didn't want to delay progress. She says that when N was challenged about the whereabouts of those materials, she was told these were stored in a lock up to prevent theft. Whilst these do seem like plausible reasons for delays, there was presumably enough work done to reassure Mrs E sufficiently to make further payments.

Mrs E told NatWest that N had been recommended by a legitimate architect who had vouched for the builder. Further to this, NatWest's investigation notes also record that Mr E had said on Mrs E's behalf "the building inspector advises that the builder has completed some jobs, and nearly finished others, and he cannot understand why this happened to this job." This doesn't support that N were operating a scam, rather that something seems to have gone wrong and that this was a private civil dispute between Mr and Mrs E and N.

Ultimately there is insufficient evidence to persuade me that the conclusion NatWest reached was unfair or unreasonable. I appreciate that the police are investigating the director of N and there are said to be other customers of N who are in a similar position. But based on all the information I've seen to date, I don't think NatWest's decision to treat this as a civil dispute was unfair or unreasonable. It's entirely possible that N had overcommitted in the work they'd taken on and had been unable to complete all the work they'd agreed. And whilst this would clearly be unacceptable to Mrs E, this doesn't mean that it meets the bar to be considered a scam where it's required for the intention to have been to deceive from the start.

Mrs E has said that she thinks NatWest failed to intervene in the payments at the times they were made and to provide suitable warnings. But given that I'm currently supportive of NatWest's decision to conclude this is a civil dispute, there isn't any basis upon which they ought to have intervened in the payments. NatWest have obligations to be alert to fraud and scams, but there is no obligation for them to intervene in authorised payments unless there is a fraud, scam or the misappropriation of funds. So, I can't fairly criticise NatWest for not having done more in these circumstances.

When Mrs E reported this to NatWest they attempted to recall the funds from the recipient bank without success. I don't think NatWest did anything which negatively impacted whether

funds could be recovered.

I accept that Mrs E has received poor service from N and that this will have been an upsetting time for her. But overall, I don't think NatWest have treated Mrs E unfairly or that they need to do more to resolve this complaint."

NatWest responded but didn't have anything to add. Mrs E didn't respond to my provisional 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.

As neither party had any further evidence or comments for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 8 August 2023.

Richard Annandale
Ombudsman