

The complaint

Mrs A is unhappy National Westminster Bank Plc will not refund the money she lost as the result of an authorised push payment (APP) scam.

What happened

As both parties are familiar with the details of the scam I will not repeat them here in full. In summary, Mrs A made two faster payments to an account she held at an e-money institution and from there she invested in cryptocurrency. The first payment was made via open banking on 15 March 2023 and was for £3,000. The second was for £5,000 on 19 April 2023. When Mrs A tried to access the gains from her investment she was told she first needed to send more money to cover taxes. She realised she had been scammed and contacted NatWest. She says the bank was unhelpful and unsympathetic when she called. She was vulnerable at the time of the scam. In addition to the refund, Mrs A wants £500 compensation and an indemnity from NatWest for any legal costs she has to pay.

NatWest rejected Mrs A's claim for a refund. It said the first payment was made through opening banking and so was not initiated by NatWest. The second payment had triggered further checks and it had warned Mrs A that it would be very difficult to retrieve her money should it transpire this was a scam. It said it released the funds after Mrs A advised, even with that backdrop, that she was happy to proceed. As the money was sent to an account Mrs A had control of NatWest said she would need to ask that provider to try to recover the funds. It agreed there was a lapse in service when Mrs A called to report the fraud. It apologised for the distress this overall experience had caused Mrs A.

Our investigator did not uphold Mrs A's complaint. He said NatWest had intervened effectively at the time of the second payment but Mrs A's responses were not honest, so the bank did not act incorrectly when it processed the payment.

Mrs A disagreed with this assessment and asked for an ombudsman's review. She said she had no choice but to lie as she was under the influence of the scammers and was afraid of losing the money she had already invested. The scammers were very experienced and manipulated her. The person she spoke to should have been more helpful and given advice about trading scams. This has significantly impacted her financial and mental health.

I reached the same conclusion as the investigator but I made different findings in places. So I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 8 January 2024.

Extract from my provisional decision

In this case I do not think NatWest ought to be held liable for the transactions. I'll explain why.

I think NatWest should have intervened at the time of the first transaction. I say this as it was out of character for Mrs A's account. Her debits in the prior 12 months were typically less than £250. This is with the exception of several higher value payments in and around December 2022, but they were all clearly linked with the narrative 'house'. So I would not

say they change the typical use of the account. And this payment was not to that same beneficiary. I am aware NatWest flagged that the first payment was made via open banking but this does not change what we reasonably expect it to do to prevent fraud. An open banking payment is a faster payment and so NatWest ought still to have been looking out for any indicators of possible financial harm and intervened as it would with any other payment that displayed risk factors.

However, in the circumstances of this case, I find it is most likely that a proportionate intervention at the time of the first payment would not have prevented the fraud. I say this based on Mrs A's responses to NatWest when it spoke to her at the time of her second payment instruction. On that call NatWest probed about the trading Mrs A planned to do but she was vague, and did not mention cryptocurrency. As she gave no specific information about what she planned to do NatWest had no opportunity to ask the questions it typically should, such as where she had found out about the opportunity or what rate of return was she expecting. By this stage Mrs A had frequent contact with the scammer and could have answered the bank's questions very differently had she opted to be transparent. She had done her own due diligence and seen positive reviews, but again said nothing about this. She confirmed she had access to the account and that she hadn't given the details to anyone else. She also confirmed no one had asked her to lie, contrary to her testimony when she submitted this complaint.

NatWest told Mrs A that if this was a scam it would be very difficult to reclaim the money and that Mrs A could lose the entire sum. She acknowledged this and said she was happy to go ahead. I do not think there were clear enough hallmarks of scam activity for NatWest to have declined to have made the payment altogether.

Mrs A says she replied as she did at the time of the second payment as she had already sent the first and didn't want to lose the money. But I think it's most likely she would have responded in the same way at the time of the first payment. I say this as I have seen no evidence she had any concerns or fears that anything might be amiss at that stage. The scammers had worked hard using multiple social engineering tactics (such as, referencing actual global financial events to define the right time to invest in March 2023; creating a false notion of shared religious beliefs and morals to gain Mrs A's trust; and demonstrating online how her trading account would work and how the investment could be tracked) so Mrs A was firmly under the spell of the scam. She had already made an initial smaller payment of £500 using a credit card and clearly felt comfortable proceeding.

So I don't think a proportionate earlier intervention by NatWest would have changed the outcome. It follows I cannot fairly hold it liable for Mrs A's losses.

I have then listened to the call when Mrs A reported the scam as she has complained about how the bank responded. NatWest agreed in the final response letter there was a lapse in service and it apologised for what Mrs A had been through. I have listened to the call, and I think the adviser explained quite clearly, albeit perhaps with minimal empathy, that Mrs A should contact the e-money institution as that was the point of loss. To be clear, I am not saying I agree with that conclusion, but as that was the bank's policy and how it would have guided all accountholders in the same position it treated Mrs A fairly and need take no further action in this regard.

Mrs A also flagged she was vulnerable at the time of the scam but I have seen no evidence the bank was on notice that this was the case, nor of how her vulnerabilities impacted her needs. I can see it has signposted her to its service Banking My Way which allows her to tell it specific information about her vulnerabilities and how it can better help her going forward.

I have then considered if NatWest did what we would expect to recover the money after

Mrs A reported the fraud. As she had moved the money first to an account in her own name and then onwards from there I agree it had no plausible opportunity to recover any of the money.

This means I am not instructing NatWest to refund any money to Mrs A. This is a difficult decision to make, I'm sorry Mrs A lost a considerable amount of money which was very distressing for her. I can understand why she would like to be compensated for her losses. And I do accept Mrs A has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find NatWest can be held liable in the circumstances of this case.

NatWest responded saying it had nothing to add. Mrs R did not respond.

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.

To reach my decision I have considered the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payments were not made to an account held by another person the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

As neither party sent in any new information or evidence I have no reason to change the findings or outcome I set out in the provisional decision.

It follows, for the reasons set out above, I am not holding NatWest liable for Mrs R's losses.

My final decision

I am not upholding Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 6 February 2024.

Rebecca Connelley
Ombudsman