

The complaint

Mr R and Miss C complain that National Westminster Bank Plc haven't refunded them after they reported falling victim to a scam.

I'll mostly refer to Mr R throughout this decision as he's the one predominantly involved in the circumstances of the complaint.

What happened

The circumstances of this complaint are well-known to all parties. With that in mind I won't provide a detailed breakdown of events here, instead giving a summary.

Mr R required a spare part for his car. This was after a series of issues that had arisen after the purchase of it in 2018/2019.

Mr R found a specialist parts merchant I'll refer to as A. He obtained a cost estimate and had to provide further details about the specifics of what was required. Mr R also sought estimates from other merchants.

Mr R decided to go ahead with the purchase with A, understanding the part would be ordered from America. He made payment of £4,075 on 5 January 2023 via bank transfer, direct to A's account.

A then informed Mr R it was having issues obtaining the part. Mr R was told the supplier wasn't being helpful in obtaining the necessary paperwork. As time went by more excuses were given by A and the part Mr R had paid for wasn't forthcoming. A month after the payment date had passed A told Mr R it was cancelling the order. But Mr R hasn't been refunded.

Since then, Mr R has made other enquiries about sourcing the part. He's been given information that appears to contradict what A had said about ordering it, including:

- it was unnecessary – perhaps even impossible – to order the required part from America;
- newly quoted costs elsewhere were much lower.

As Mr R received neither the part nor a refund, and given what he'd since been told about how the required part might be obtained, he reported to NatWest that he'd been the victim of a scam.

NatWest considered the claim but said it wouldn't refund Mr R. It said a genuine payment had been made to a genuine merchant. It didn't suggest Mr R had lost out, but it said the matter was a civil dispute and not a loss the bank would reimburse him for.

Mr R was unhappy and so brought his complaint to our service. One of our investigators considered what had happened and found NatWest had acted fairly and reasonably in not refunding Mr R's loss. He agreed Mr R had a civil dispute with A and that there wasn't sufficient evidence to show a scam had taken place.

Mr R still felt that A had deliberately misled him to the extent that it had committed theft or fraud against him. So he asked that an ombudsman review his complaint.

Mr R filed a small claims court case whilst also complaining to NatWest and this service. A judgement was made on 23 October 2023, where the judge said A should repay the £4,075 paid along with costs. My understanding is that A is yet to pay Mr R.

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.

I'm sorry to disappoint Mr R further but I'm not upholding his complaint, and for broadly the same reasons as our investigator.

A customer is responsible for payments made from their account that are properly authorised, as per the Payment Service Regulations 2017. Mr R did authorise the payments here and so is presumed liable for them.

NatWest is a subscriber to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. This seeks to see the victims of scams refunded in most circumstances. But it doesn't apply to all disputes.

The Code states, at DS2(2), where applicable scope is described, that the following will not be covered: *"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"*

I'm satisfied Mr R's a civil dispute with A; I'm not persuaded a scam has taken place.

In making this finding I'm not saying that Mr R hasn't lost out or that A hasn't treated him very poorly. It's clear Mr R hasn't received what he paid for, and A appears to have been uncooperative in resolving the issue, even in the face of a court order.

But I'm not persuaded the high threshold for establishing that a scam has taken place has been met here.

It's clear that A is a long-established merchant and has operated in the automotive industry for a long time. A look on Companies House reveals the business has been running since 1999. It's unlikely that a business that was out to routinely scam and deceive people would remain a going concern for so long, and it is still trading.

The evidence of correspondence between Mr R and A also clearly demonstrates a level of knowledge and engagement – up to the point payment was made at least – that I wouldn't expect from a scammer.

I know Mr R has suggested A didn't appear to know some key information about ordering the part he needed, such as it not being available for import from America. But I don't find that persuasively demonstrates that A was out to scam Mr R from the outset. It's just as – if not more – likely that A misunderstood how and from where it might source the required part. It's not actually even clear if what Mr R was told by other potential suppliers is true, or that it was in fact impossible for A to obtain the part from America.

I've noted that Mr R approached A for a quote initially and, whilst he was given one, he was told more specifics were required (in the form of the part number). But had A intended to deceive Mr R from the outset I can't see why it would have sent Mr R away to obtain further details first. It seems more likely than not it would have simply accepted his request and taken the money at that stage.

I've looked over the bank statements of A and I can't see anything that would lead me to believe it was out to deceive Mr R and steal from him at the time he made payment for the part he needed. And it appears there have been no other reports of a scam reported to the receiving bank.

I have also considered the history of A Mr R has shared with us. This includes records of other small claims court cases, CCJs, and negative reviews. I appreciate that much of this evidence points to similar instances of A failing to deliver on its contractual obligations.

Whilst these reports might show that A has also failed other customers, it doesn't persuade me that it deliberately set out to steal Mr R's money, with no intention of ever supplying what he paid for. And it can't be ignored that there are also positive reviews of A to be found.

Overall, I'm persuaded Mr R made a legitimate payment to a legitimate supplier, but the supplier has failed to honour the agreement. This means the CRM Code doesn't apply and there are no grounds on which I can say NatWest ought to bear responsibility for Mr R's loss.

My final decision

I don't uphold this complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr R to accept or reject my decision before 21 February 2024.

Ben Murray
Ombudsman