

## **The complaint**

Mr H, on behalf of M, is unhappy that National Westminster Bank Plc will not refund all of money he lost as the result of an authorised push payment (APP) scam.

## **What happened**

Both parties are familiar with the details of the scam so I will provide only a summary here. Mr H made 11 international money transfers between 12 April 2022 and 16 May 2022 totalling £146,738.54. He believed he was sending money to purchase machines and parts, on receipt of invoices, that would be shipped to a company he had worked with for two years. This was to allow both companies to benefit from a business opportunity. He thought the CEO of the second company had emailed him with this opportunity. When he later contacted the CEO it became clear he had been the victim of an email intercept scam. He reported this to NatWest on 1 June 2022.

Mr H says NatWest failed to protect him and must refund all monies he has lost. He is unhappy it did not carry out further checks and says its recovery attempts were not satisfactory.

Our investigator did not uphold M's complaint. She said the payments were not out of character for M's account, and even if NatWest had intervened at some point she did not think the scam would have unravelled. She felt NatWest had done as much as it ought to try to recover the funds.

Unhappy with this assessment Mr H asked for an ombudsman's review. He said he still had not seen NatWest asked the right questions of the recipient bank or that it had contacted the beneficiary as he had requested, or that this service had listened to all the calls he had with NatWest. He also said there were no overseas transactions for anything like this fraud from M's account and requested the dates and values of the 'payments of similar amounts' that the investigator had referenced.

## **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 am not upholding Mr H's complaint. I will explain why but I first want to clarify this service's approach to gathering evidence. Under the rules we must follow DISP 3.5.8 sets out that the ombudsman service can determine what evidence is required to reach a fair and reasonable decision. In this case the investigator decided it was not necessary to listen to all calls between the parties, nor did she need the transcripts of the messages sent to the recipient bank as the bank's fraud notes provided an adequate summary, including the email response to the request for funds to be returned. I find these decisions to be reasonable in the circumstances of this case.

There's no dispute that Mr H made and authorised the payments. Mr H knew who he was paying, and the reason why. At the stage he was making these payments, he believed

he was purchasing machines and parts that would allow him to participate in a business opportunity with a known, legitimate contact. I don't dispute Mr H was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that NatWest has an obligation to follow Mr H's instructions. So in the first instance Mr H is presumed liable for his loss. But there are other factors that must be considered.

To reach my decision I have taken into account 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 international the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that NatWest should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

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

I don't think the transactions were out of character for M's account. Payments of this value – and higher – were not uncommon. Mr H asked for details of which transactions the investigator was referring to, but from my review of M's account history I can see there were a number of similar value payments, not just one or two specific ones, and Mr H will be able to see that on the account statements for M. Indeed there was a previous payment with the CEO's company name used as the reference. The payments did not drain the account and were not made in quick succession.

I accept they were international, but I don't think in the round this factor alone ought to have led NatWest to suspect Mr H may be at risk of financial harm. And there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. So I cannot fairly conclude that NatWest ought to have intervened in any of the transactions.

And as that is my finding I do not need to reach a conclusion on whether any warning would have changed the outcome. NatWest has evidenced that it presented a scam warning to Mr H as part of the online payment process, specifically referencing email intercept scams, but this did not stop him from making the payments.

I have then considered if NatWest did what we would expect to recover the funds after Mr H reported the scam. As the payments were international the bank's obligations are different to UK-to-UK transactions.

Mr H reported the scam on 1 June 2022 and on that same date NatWest contacted the beneficiary bank to try to recover the money. It was told the accountholder had said the

goods had been shipped as planned and there was no refund owing. Mr H is dissatisfied that NatWest has not evidenced it followed his requests to ask the supplier for shipping documentation, but I think at that stage the nature of the dispute changes and such actions would be beyond the bank's remit. It would become a civil matter for Mr H to pursue with the supplier.

I can see NatWest did not simply accept the initial response from the overseas bank, it went back to the specific branch involved to explain the funds received were the proceeds of fraud and should be returned. It followed this request up three times but unfortunately received no reply. Overall, I find NatWest did what we would expect when trying to recover monies from an overseas bank.

This means I am not instructing NatWest to refund any money to M. This is a difficult decision to make, I'm sorry M lost a considerable amount of money which was very distressing for Mr H. I can understand why he would like M to be compensated for the loss. And I accept Mr H 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.

### **My final decision**

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H on behalf of M to accept or reject my decision before 8 August 2023.

Rebecca Connelley  
**Ombudsman**