

The complaint

Miss H complains that National Westminster Bank Plc treated her unfairly when she reported making a payment to someone she now believes defrauded her.

What happened

Miss H holds a current account with National Westminster Bank Plc (NatWest). In late 2021 she was contacted by a friend of some years standing. For ease in what follows I will refer to this friend (now former friend) as F.

F said she was getting married and invited Miss H to attend. As the wedding was taking place overseas, Miss H was asked to pay for her own hotel accommodation.

Miss H accepted the invitation and on 17 November 2021, she sent F £155 by bank transfer to cover the accommodation cost.

In December, Miss H messaged F asking for a receipt. F sent a copy of the hotel receipt showing a much higher sum, in F's fiancé's name. She explained that this was the receipt for the whole reservation, and that she didn't have individual receipts.

Miss H asked F what the hotel policy was on deposits, in case of a refund being requested – citing the possibility of Covid-19 being an issue. F replied that no refunds were available but that as the event wasn't until later in the year, hopefully this wouldn't be an issue.

Miss H has since looked at the hotel's own website, and this indicates refunds should be possible. She says F has ceased responding to her messages.

Concerned that F had scammed her, she reported the matter to NatWest.

NatWest initially said that while her claim wouldn't normally have succeeded it would refund her the sum she'd lost as a gesture of goodwill. It said this concluded its investigation.

However, two months later NatWest wrote again. This time it said it wouldn't be refunding Miss H. It said this was a dispute between her and F. The bank reversed the credit it had applied to Miss H's account.

Miss H was unhappy with this and complained. She subsequently made NatWest aware that she suffers from a serious mental health condition and that she had done so at the time of the payment. She thought NatWest hadn't done enough at the time of the payment and she didn't think it had treated her appropriately afterwards, including when she'd raised her complaint. It had fallen short on numerous occasions throughout.

That included when she'd made a Subject Access Request (SAR). NatWest accepted it hadn't handled the SAR as it should have done, and paid Miss H £100 compensation.

Miss H remained unhappy and referred her complaint to this service. Our Investigator said he thought NatWest hadn't handled the withdrawal of the funds from Miss H's account appropriately, in particular by not making it clear that this might be reversed. By way of

putting things right, he said NatWest should therefore recredit the funds it had removed and add interest from the date of the reversal. But he didn't think NatWest's handling was sufficiently poor to merit an award for distress or inconvenience.

NatWest accepted the Investigator's findings. Miss H disagreed. She submitted a dossier of evidence supporting her case and argued that she should receive a full refund, with interest plus an award of £3,500 for the distress and inconvenience she'd been caused.

I issued my provisional findings on the merits of Miss H's complaint on 15 November 2023. In my provisional findings, I explained why I intended to uphold Miss H's complaint in part and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

Where the evidence is unclear or more than one explanation is possible, I am required to make my findings based on the balance of probabilities – in other words, based on what I consider to be most likely given the available evidence.

Firstly, I'd like to acknowledge the distress Miss H has been caused by what happened here. It has clearly had a significant impact. She made a payment in good faith to her seeming friend, and not only has that relationship now broken down, but Miss H suspects F may have misappropriated her funds. Miss H explains about the consequences of this betrayal of trust, and how she has since suffered with a number of health issues. Miss H says this impact resulted in part from NatWest's handling of the matter.

In considering NatWest's handling of the matter, it is important to begin by considering the relevant obligations it faced here. As a starting point, a bank is required to execute the correctly authorised payment instructions of its customers without delay. NatWest was obligated to make the payment Miss H told it to. Miss H is therefore responsible for the payment she instructed NatWest to make for her.

Unfortunately, there's little protection available for bank transfer payments, as this was. The protections that would apply against breach of contract or misrepresentation if the payment had somehow been made by card aren't available here.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams where the payment is made by bank transfer. But it only applies to APP scams, and it includes a specific exclusion for: "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".

NatWest says it considers (seemingly based on information it received from the recipient bank) that this was a buyer-seller dispute and so reimbursement under the CRM Code isn't applicable. I understand by this that it seeks to rely on this exception from the code for private civil disputes, and so does not consider the CRM Code applies. I have therefore considered whether NatWest can fairly seek to rely on that exception.

Importantly, failure to provide goods or services isn't sufficient for the code to apply. Neither would a defective service, such as not providing a booking receipt or failing to plan the travel arrangements. In order to find that NatWest was somehow liable to Miss H under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate, criminal scam from the outset rather than it being such a private civil dispute between Miss H and F.

Simply put, that means deciding whether the available evidence shows it is most likely that F set out to defraud Miss H with criminal intent. That is a high bar to meet.

I appreciate Miss H now believes her friend deceived her about the hotel booking. She explains that there is no evidence that a booking specifically for her was made. While F has produced a receipt from that hotel for a much larger sum, and while I think Miss H accepts this might be for the overall wedding booking, she points out that there is no confirmation of her own individual room booking.

Miss H has tried without success to clarify this with the hotel directly. I cannot know whether or not F did arrange for Miss H to have a room at the hotel as she said she would, perhaps as part of a much larger package paid for by her fiancé. It is possible she did, and it is possible she did not. While Miss H believes her friend deliberately deceived her about the hotel's cancellation policy, it is not clear to me that this was the case. The information Miss H has supplied about cancellation relates to individual room bookings made directly with the hotel. It is not clear whether that would extend to a group booking such as it appears this was, nor that F's comment wasn't simply one made in error and without malicious intent.

All considered I simply can't safely conclude that F took Miss H's money without ever having the intention of booking accommodation for her. The evidence available to me simply isn't enough to support such a finding. It isn't inconsistent with this having been simply as it appeared to be. So, I don't think NatWest was at fault in reaching the outcome it did.

However, prior to reaching that outcome, NatWest had initially refunded Miss H. It said it did so outside the provisions of the CRM Code, and as a gesture of goodwill. When NatWest received information that led it to believe the matter a private civil dispute, it reversed the credit it had placed on Miss H's account.

NatWest says its staff would have made Miss H aware this was possible at the time they spoke to her about the initial credit. It says that wording is part of the disclaimer they were required to read. Miss H says that wasn't something she was made aware of.

Unfortunately, NatWest has been unable to produce the call recording or other evidence that might show Miss H was told the credit might later be reversed.

Based on Miss H's response when the credit was reversed, evidenced by her contemporaneous correspondence and telephone conversations with the bank, I'm persuaded she wasn't aware this was possible. Even though I accept it is possible that NatWest told her at the time, I don't think it took sufficient steps to make sure she appreciated what this meant.

In any event, I find NatWest should have done more to make Miss H aware of what might happen. After all, it seems to me that from the outset the bank would have realised there was a significant chance that F would dispute the scam claim, and reversal of the credit was a likelihood. I think NatWest ought to have anticipated this likelihood and taken steps to reduce any confusion or distress caused when it needed to later reverse the payment. Not making Miss H sufficiently aware of this strong possibility meant that when it happened, she suffered unnecessary distress and inconvenience.

I have also noted Miss H's comments about the subsequent interactions she had with NatWest by phone, email and letter. With this in mind I've reviewed the bank's correspondence and telephone interactions with her. But while I appreciate Miss H's

frustrations with the matter, I don't find this went beyond the normal day to day frustrations that might reasonably be anticipated in resolving a complaint about financial matters.

NatWest accepts it could have handled Miss H's associated Subject Access Request better. It has already paid her the sum of £100 in respect of this. I think that is a fair sum in the circumstances. Miss H comments that if NatWest was to be fined by the ICO for handling requests in this manner the fine would be higher than the £100 the bank offered. I do not have the powers of a regulator, such as the ability to punish or fine businesses for failure to meet regulatory requirements. Thinking about the impact Miss H has described for this aspect of the matter, and taking account of all the circumstances, I consider £100 to be broadly in line with the award I'd likely have made.

I've also taken into account Miss H's comments about why she believes the bank didn't do enough at the time of making the original payment. However, I don't consider there was sufficient reason for NatWest to have had significant or specific concerns about this payment instruction — to the extent that it shouldn't have processed it. The value was not remarkable in the context of Miss H's typical account usage. There wouldn't have been any indication from the bank's perspective that all might not be as it seemed. It was obliged to make the payment Miss H was instructing it to make.

That means I don't consider NatWest can fairly be expected to have provided a specific scam warning, or even to refuse to process Miss H's instructions. And in any event, had the bank taken either step, I don't think that would have led Miss H not to make the payment — at the time she believed it was entirely legitimate in nature.

That being said, I have found that NatWest could have handled matters better surrounding the reversal of the payment credit. I have gone on to consider the impact of this on Miss H.

In saying this, I cannot easily disentangle the effect of Miss H's subsequent interactions with NatWest from the original effect of F's apparent betrayal of trust. However, in order to reach a fair outcome that distinction is one I must make. I must also consider the degree of foreseeability for the share of the impact for which NatWest was responsible.

I've taken careful account of everything Miss H has submitted, and I have reviewed the documents and call recordings made available to me. While, as I've observed, I cannot know for certain what extent of the consequences incurred by Miss H flowed solely from NatWest's actions (or inactions), I consider that the primary cause of what happened here was what happened between Miss H and her friend. But for that, the rest would not have followed.

In terms of apportioning the blame for this impact, as a general point it seems to me that the perceived betrayal of trust by someone trusted as a friend must count for significantly more than even poor service by a company a customer deals with as a result. That is reflected in Miss H's own comments about the results of these events. That is not to belittle the impact poor service can have in such a situation. But taking into account what Miss H has said, I consider the friend was significantly more to blame here than NatWest.

Because I find NatWest was entitled not to consider Miss H's claim under the CRM Code, and was entitled to reverse the credit it had earlier applied as a gesture of goodwill, I do not find the bank is liable to recompense her for the money she lost to F.

But all considered I do find NatWest added to the impact on Miss H of an already

upsetting and distressing situation. Some of the additional distress and inconvenience caused was the result of NatWest's actions and inactions here. While I consider that was significantly less than the impact of F's actions, I think it fair and reasonable in all the circumstances that NatWest should pay Miss H compensation in respect of the additional distress and inconvenience it caused her. All taken into account I consider the sum of £250 would fairly compensate Miss H for this.

I appreciate Miss H would like a higher sum, and that she also wants the bank to pay her for the money she lost to her former friend. But I need to be fair to both sides, and I think that a considerable portion of the impact this matter had on her was due to F not to NatWest. And I do not find NatWest is liable to Miss H for the sum she paid to F.

My provisional decision

As set out above I'm minded to find that NatWest should pay Miss H the sum of £250 in respect of the distress and inconvenience she was caused by its handling of this matter.

In my provisional decision, I asked both sides to provide any further arguments or information by 12 December 2023, after which point, I said I would issue my final decision on the matter.

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.

Miss H did not respond to my provisional conclusions, or raise any additional information or arguments.

NatWest responded to accept the decision and did not raise any objections or arguments.

In light of this, I see no reason to depart from the findings and the resolution I proposed in my provisional decision as quoted above, and for the same reasons.

Putting things right

It is my final decision that NatWest should pay Miss H the sum of £250 in respect of the distress and inconvenience she was caused by its handling of this matter.

NatWest should make this payment to Miss H within 28 days of receiving her acceptance of this decision and the details of the account to which she wishes the payment to be sent.

My final decision

For the reasons detailed above, I've decided it is fair and reasonable to partly uphold Miss H's complaint about National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 19 January 2024.

Stephen Dickie
Ombudsman