

The complaint

Mr B complains that National Westminster Bank Plc, as the receiving bank, did not do enough to help him when he raised concerns about a payment he had made.

Mr B has also complained about the sending bank. That matter is being considered as part of a separate complaint, so in this decision I am only looking at the actions of NatWest.

What happened

The circumstances of this complaint are well known to both parties, so I have summarized the key details below.

On Saturday 23 November 2019, Mr B made an online payment of £1,695 from his bank account to a NatWest bank account. He was intending to buy a business he'd found advertised online and made the payment following discussions with the seller.

At 9:12 on Monday 25 November 2019, Mr B contacted his bank. He asked it to stop the payment as he thought he was about to be scammed. He explained he was supposed to have been in touch with the seller that morning but he'd not responded. Mr B said he now thought the offer seemed too good to be true and that the business was priced below what he thought its market value might be. At 10:01, Mr B's bank contacted NatWest. It explained Mr B had raised concerns about a payment he'd made and it was possible he'd been the victim of a scam. As funds remained, NatWest froze the receiving account and contacted its customer.

In the interim, the seller emailed Mr B the details needed to run the business, including log in details for the website, email templates and links to forms. The email was sent at 11:54 and Mr B confirmed he'd received the documents at 12:00.

Later that afternoon, the seller responded to NatWest and provided evidence to support his position that he had entered into an arrangement with Mr B and provided a service to him.

NatWest considered the evidence the seller provided and felt this matter was not a scam, but a civil disagreement between the two parties. It removed the hold it had placed on the receiving account, releasing the funds back to its customer. NatWest contacted Mr B's bank the next morning to let it know.

Mr B then complained to NatWest. He said the bank had failed him and failed in its duty of care. He felt it had not investigated his claim correctly and had reached its decision to release the funds far too quickly.

On 17 December 2019, NatWest issued its final response. It felt it had investigated the issue correctly by freezing the receiving account and making contact with its customer to find out more. It explained if evidence is received that it is a civil matter, the stop on the account will then be removed. It explained it was unable to give Mr B detailed information on the evidence its customer provided or the precise nature of its investigation, but it confirmed the

correct processes were followed. NatWest concluded there had been no bank error and said it would not reimburse Mr B for his loss, suggesting this was instead a civil matter between the two parties.

Mr B referred his complaint to this service. He said he was satisfied what happened was fraud and that's why he raised it as such.

Our investigator considered the matter and concluded she was unable to fairly ask NatWest to refund Mr B. She didn't think the payment Mr B had made was covered by the Contingent Reimbursement Model Code (the CRM Code), which was established to provide protection for customers who fall victim to authorised push payment scams. She wasn't persuaded there was enough evidence to show the seller intended to deceive Mr B. Whilst she recognised the business arrangement between Mr B and the seller did not go as planned, she thought Mr B had paid for goods from a legitimate seller.

She also looked at NatWest's actions at the time and thought it had acted correctly, and in line with the Authorised Push Payment Voluntary Best Practice Standards issued by UK Finance and Financial Fraud Action UK in April 2018. She noted there wasn't a minimum timescale for investigating a dispute and that she'd expect NatWest to act as quickly as possible to investigate any scam claim made against its customer.

Mr B did not agree and asked for an ombudsman to review the matter. In summary, he said he'd been the victim of an injustice and the answer reached was not fair and reasonable. He said the bank's investigation could not have been conducted to the high standards expected from the Financial Services industry in the timescale it took.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Having done so, I agree with the position our Investigator reached. I think NatWest dealt with the matter properly. I'm sorry to have to disappoint Mr B, but I can see no basis on which I can fairly require NatWest to refund the money he sent. I will explain why.

Should NatWest have refunded Mr B under the CRM Code?

At the time Mr B made the payment, the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code) was in force. NatWest has signed up to the CRM Code and it covers detection, prevention and response to APP scam payments.

So I've thought about if the CRM Code applies in the circumstances of the payment Mr B made and, in particular, whether NatWest ought to reimburse him under the provisions of the CRM Code. But I don't think NatWest is responsible for reimbursing Mr B because of any obligation under the CRM Code.

The CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) 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"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both the bank and our investigator felt the payment Mr B made formed part of a civil dispute and, as such, is not covered by the CRM Code. In order to conclude that the payment Mr B made was part of a scam and therefore covered by the CRM Code, I'd need to be reasonably satisfied from the available evidence that the seller was not legitimate and had set out to deceive Mr B. But I don't think I can fairly say the seller had no intention of providing the goods or services Mr B paid for right from the start.

Mr B does not dispute that he received email templates, website log in details, email log in details and links to the paperwork the seller said would be required to run the business. Mr B spoke to the seller before he made the payment and I'm mindful the dialogue with the seller continued after the payment was made. It would be unusual for a seller to continue to discuss a matter and engage with further contact when there's no obvious further financial gain to be had.

The seller offered to support Mr B whilst he established the business by providing training and I'm mindful that this did not take place. But I don't think this is a strong enough indicator that the business opportunity was a scam. I've seen copies of emails exchanged between Mr B and the seller and I think the training and support ultimately did not happen because the working relationship between the parties deteriorated.

I've also seen the evidence the seller provided to NatWest. When NatWest reviewed it, it considered the matter to be a dispute between the two parties. I can appreciate that Mr B feels strongly that his own experience and dealings indicate the seller was operating a scam. Whilst I am unable to share details about a third party and the nature of their relationship with their bank, I think the evidence provided was sufficient to show the seller's legitimacy. I have not seen any persuasive evidence to show otherwise. As such, I don't think NatWest acted unfairly when it decided the payment Mr B made fell outside of the scope of the CRM Code.

Did NatWest treat Mr B fairly and reasonably when it released the funds back to its customer?

Almost all of the money Mr B had sent to the seller remained when NatWest learned of the dispute Mr B had raised. So I've also considered NatWest's response when responding to the reporting of a potential scam from Mr B's bank.

Mr B says NatWest did not conduct a fair and thorough investigation into the matter and reached the outcome too quickly. He suggests that both the victim and the fraudster should have contributed to the investigation and that it was impossible for a thorough investigation to have been undertaken in hours.

But I think NatWest responded to Mr B's bank appropriately, and within the timeframes and the manner set out in the Authorised Push Payment Voluntary Best Practice Standards.

NatWest froze the receiving account and restricted the seller's access to it pending further enquiries. This is what I would expect to happen when a bank is put on notice of a potential problem and funds still remain.

It was for NatWest as the seller's bank to contact its customer, conduct an investigation and recover funds if it was possible to do so. Mr B's own bank was his sole point of contact in relation to this matter, so I don't think NatWest acted incorrectly by not contacting him directly to discuss the situation at any point.

I also don't think NatWest needed to consult with Mr B's own bank before concluding its investigation. Banks have agreed on a set of necessary information to be collated by the sending bank following reports of a potential scam. Mr B's bank collected this information from him when he phoned to report the situation and then provided it to NatWest.

NatWest contacted its customer and asked for more details around the payment. The seller provided evidence to support the legitimacy of the payment. The Best Practice Standards explain that NatWest did not need to return the funds to Mr B's bank if there was a credible complaint or dispute received from the recipient of the funds. NatWest felt it had enough to make a determination that the seller's position was, on the face of it, credible and that the payment had not been sent incorrectly. From what I've seen, I think it had a sufficient basis to fairly make that judgment call. By doing so, NatWest was not making a determination that the seller was entitled to the money over Mr B. It was making a determination that it was not required to return those funds to Mr B's bank. The true ownership of funds is a matter for the Courts. I am not able to say who the legal owner of the money should be. In my role, I can only make a determination about the actions of NatWest.

I can appreciate that Mr B does not have confidence in the depth of NatWest's investigations because they were concluded quickly. But the seller responded to NatWest's enquiries very quickly. There is nothing in and of itself concerning about that. Not being able to use a bank account is prohibitive and I don't find it unusual that the seller wanted to resolve that situation as soon as possible.

I am sorry to have to disappoint Mr B. But I can only make an award against a bank if that bank has done something wrong which has led to a loss. In this case, I've not seen any evidence to show that NatWest has acted incorrectly or that it ought to have done more than it did to assist Mr B. I don't think NatWest acted unreasonably by not returning the funds. It follows that I can't fairly require NatWest to pay Mr B the money he's lost.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 February 2021.

Claire Marsh
Ombudsman