

The complaint

Miss R is unhappy because National Westminster Bank Plc (NatWest) did not reimburse all the money she transferred to a fraudster.

Background

Both parties are aware of the circumstances of the complaint so I won't repeat them in detail here. But briefly, Miss R has explained that between 2013 and 2014, she was involved with a professional gambler who she would receive betting tips from. Miss R lost around £10,000 to £15,000 in total through her dealings with the gambler and so stopped.

In March 2020 Miss R was contacted by someone who claimed to be a private investigator who was looking into the actions of the professional gambler. Unknown to Miss R at the time, this investigator was actually a fraudster.

The fraudster knew of Miss R's involvement with the professional gambler and suggested he could get Miss R's money back, but that she would need to pay an up-front fee of 10% of her refund, which Miss R agreed to. The fraudster, and others involved in the scam, continued to then ask Miss R for further payments before she'd receive her refund and also, on occasions, visited her at her home. Miss R made the following payments from her NatWest accounts to the scammer:

Account 1:

Date	Payee	Payment value
01/04/2020	Payee 1	£250
02/04/2020	Payee 1	£995
03/04/2020	Payee 1	£995
06/04/2020	Payee 1	£550
06/04/2020	Payee 1	£389

Account 2:

Date	Payee	Payment value
06/04/2020	Payee 1	£918
08/04/2020	Payee 1	£995
09/04/2020	Payee 1	£995
10/04/2020	Payee 2	£995
11/04/2020	Payee 2	£995
12/04/2020	Payee 2	£855
16/04/2020	Payee 2	£2,845
18/04/2020	Payee 3	£9,659
22/04/2020	Payee 4	£100
22/04/2020	Payee 4	£6,350
23/04/2020	Payee 4	£6,350
24/04/2020	Payee 4	£3,385

27/04/2020	Payee 4	£3,385
29/04/2020	Payee 4	£6,245
29/04/2020	Payee 4	£4,500
29/04/2020	Payee 4	£474
29/04/2020	Payee 4	£4,270
29/04/2020	Payee 4	£3,800
06/05/2020	Payee 4	£5,479
09/05/2020	Payee 4	£1,795
19/05/2020	Payee 4	£3,080
19/05/2020	Payee 4	£1,425
20/05/2020	Payee 5	£550
21/05/2020	Payee 5	£4,950

Miss R has explained she kept making further payments, as she was told the value due to be refunded to her was also increasing. She's said that when visited at her home, the fraudsters would show her cheques or bankers drafts in her name but wouldn't release these to her without further payments, which she couldn't make at the time, and so the fraudsters would take them away.

Miss R has said she didn't receive any form of contract from the scammer, but believed what she was told because of what he knew about her involvement with the gambler previously. She also said she researched the 'private investigator' online but couldn't find any results. Miss R says she also researched the professional gambler online, and saw he was no longer in business which also reassured her that the investigator was in fact legitimate.

After making payments to the fraudster, Miss R received no refund as promised and was unable to contact the him. Miss R realised at this point she'd been the victim of a scam and contacted NatWest to raise a claim.

NatWest investigated Miss R's fraud claim and considered its obligations to provide Miss R with a refund. NatWest is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM) Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. NatWest says one or more of those exceptions applies in this case.

NatWest has said Miss R didn't have a reasonable basis for believing she was making genuine payments towards a legitimate service. However, NatWest did recognise it hadn't met the standards it was required to under the CRM Code for all payments. It said it could have done more to protect Miss R at the time given the pattern of payments made. NatWest therefore refunded 50% of the value of payments made by Miss R from 22 April 2020 onwards. The beneficiary bank for payee 3 also accepted it could've done more to protect Miss R and provided a 50% refund of the £9,659 payment she made to their customer's account.

NatWest contacted the beneficiary banks to attempt to recover any more of Miss R's money, but unfortunately no funds remained in the accounts.

Miss R disagreed with NatWest so brought the complaint to our service. During an investigator's review of the case, NatWest determined it was jointly liable for further transactions and offered to refund 50% of all further payments on account 2 (minus the payment of £9,659, which Miss R had already received a 50% refund on from the beneficiary bank.) However NatWest said it wouldn't be applying any interest to this settlement offer.

One of our investigators considered the case and agreed that the offer NatWest had made was fair – he thought that, in the circumstances, Miss R ought to have completed further checks to verify that she was genuinely speaking to a private investigator before making payments, so should be held jointly liable for the transactions she made. The investigator considered that NatWest should have provided a 50% refund from 9 April 2020. He said at this point, Miss R's pattern of spending was sufficiently out of character that NatWest should've intervened. The investigator thought that although NatWest hadn't awarded the simple interest that would be expected in complaints of this nature, as its offer covered more payments than he would otherwise have recommended, the offer was still fair.

Miss R didn't agree with the investigator. She said she honestly didn't know she was being scammed and was in a vulnerable position due to the scam coinciding with the start of the Covid pandemic. She said the fraudsters also told her one of the 'private investigators' involved had committed suicide, which brought back memories of tragedies in her own family history.

As Miss R didn't agree with the investigator's opinion, the complaint has been referred to me for a final decision.

My findings

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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether NatWest should have fully reimbursed Miss R under the provisions of the CRM Code and whether it ought to have done more to protect Miss R from the possibility of financial harm from fraud.

There's no dispute here that Miss R was tricked into making the payments. She thought she was making genuine payments to a private investigator and that didn't happen. But this isn't enough, in and of itself, for Miss R to receive a refund under the CRM Code. The Code places a level of care on Miss R too.

The CRM Code

As I've mentioned, NatWest is a signatory of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for NatWest to establish that a customer failed to meet their requisite level of care under one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an “Effective Warning” by failing to take appropriate action in response to such an effective warning
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

**Further exceptions outlined in the CRM Code do not apply to this case.*

In this case, NatWest has accepted it didn't provide an 'Effective Warning' and that it should've made checks with Miss R about the payments she was making by the time she began using 'account 2' to make payments to the fraudster - which is why it's refunded 50% of payments made from this account (except the £9,659 payment which the beneficiary account provided a 50% refund on). However I think NatWest has been able to establish that it may choose not to fully reimburse Miss R under the terms of the CRM Code. I'm persuaded one of the listed exceptions to reimbursement under the provisions of the CRM Code applies.

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I think the concerns NatWest has raised about the legitimacy of the transactions Miss R was making are enough to support its position that she failed to meet her requisite level of care under the CRM Code for the payments she made. I don't think Miss R had a reasonable basis for believing the person she transacted with was legitimate. I'll explain why.

Miss R has explained she was contacted out of the blue by the fraudster, advising he had been investigating the private gambler Miss R used. Miss R said she researched the gambling expert online and saw he had gone out of business, which reinforced her belief that what the fraudster was telling her was true. I think it should reasonably have concerned Miss R that an investigator would contact her without her having first enquired for help. Having looked online myself I also haven't been able to identify anything to suggest the gambling expert Miss R used has gone out of business, or anything to indicate his actions have been determined to be fraudulent. I therefore think that by looking online, Miss R ought reasonably to have questioned what she had been told.

Miss R has said she saw paperwork when visited by the fraudster, but never received a copy of anything such as a contract. Again I would consider it unusual for a legitimate private investigator to not provide anything in writing to confirm the scope of service provided, or overall costs involved. Miss R said she researched the private investigator as well but couldn't find any details of him. Again I consider this should've been concerning and raised questions about his legitimacy.

Miss R eventually made payments to five different payees, for amounts far exceeding the amount she had actually lost through gambling. Again I think Miss R should reasonably have questioned why she was having to pay so much - and I don't think it's reasonable that any investigator's upfront fees would outweigh the expected return. I appreciate that by this point, Miss R had already made many payments and was invested in the process - but I still think the value and number of payments being made should reasonably have alerted her that something may be amiss.

Having considered Miss R's response to our investigator's view, I'd like to reassure Miss R that this doesn't mean I think she made the payments knowing they were towards a scam. I appreciate it's Miss R who is the innocent victim here. But I think Miss R could've done more to check the legitimacy of the fraudster, before agreeing to make payments.

I've also considered Miss R's points that she was vulnerable at the time of this scam. The CRM Code includes a provision to refund customers who are vulnerable. It sets out that a customer should be considered vulnerable if *'it would not be reasonable to expect those customers to have protected themselves, at the time of becoming a victim of an app scam, against that particular scam'*. This means an individual can be 'vulnerable' to a scam based on their particular circumstances at the time of the scam. I've considered whether I think this applies to Miss R's circumstances, but I haven't concluded that it does. While I don't doubt the beginning of the pandemic was a difficult time for Miss R and that references to suicide, similar to Miss R's personal experiences may have played on Miss R's emotions, I don't consider it 'unreasonable' to expect her to be able to protect herself in the circumstances, so I think NatWest has acted fairly by still applying the additional criteria of the Code when assessing her claim.

With all of the above in mind, in the particular circumstances of this case, I consider that Miss R ought to have had concerns about the legitimacy of the private investigator she had contact with and that, in turn, ought to have led to a greater degree of checking on Miss R's part. In not carrying out sufficient checks I don't find she had a reasonable basis for believing the private investigator was genuinely investigating a case for her and so fell below the level of care expected of her under the CRM Code.

Should NatWest have done more to try to prevent the scam and protect Miss R?

I've thought about whether NatWest did enough to protect Miss R from financial harm.

The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide Effective Warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I am also mindful that when Miss R made these payments, NatWest should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things).

NatWest has acknowledged it could've done more to protect Miss R from financial harm for payments she made from account 2, but I've considered whether Halifax should have done more to protect Miss R when she made the payments from account 1 to the fraudster.

Having considered the payments made on account 1, I don't think their value or frequency was so remarkable that they should've appeared as suspicious to NatWest. I therefore don't think NatWest failed to meet its standards under the Code by not providing Miss R with a warning, prior to processing the payments.

While NatWest has refunded most payments from account 2, it didn't offer any refund on the payment of £9,659, as Miss R had already received a 50% refund from the beneficiary bank. The Code states that where both the sending bank, receiving bank and customer are liable for a transaction, liability should be split equally between all parties. I therefore think NatWest should refund Miss R a further 16% of this transaction, so Miss R's liability is 33%, rather than 50% - which it has agreed to do.

I also think that for fraudulent payments made from account 2 between 6 April 2020 and 18 April 2020, which NatWest agreed to refund 50% of from a later date, 8% simple interest should also be applied in line with our approach - from the date the payments were made until the date of settlement. NatWest has also agreed to this. Miss R has been made aware of the further settlement offers made by NatWest.

Overall, I'm satisfied that this is a fair and reasonable assessment of Miss R's fraud claim under the CRM Code, and that NatWest shouldn't be held further liable for Miss R's losses. I do sympathise with Miss R as she's clearly been the victim of a cruel scam. But the circumstances of the case and the evidence available lead me to find that she should also be held liable for some of those losses incurred.

My final decision

For the reasons I've explained, my final decision is that I partially uphold Miss R's complaint against National Westminster Bank Plc. I require National Westminster Bank Plc to:

- Provide a 16% refund for the payment of £9,659 Miss R made to the fraudster
- Provide a 50% refund on all other fraudulent payments Miss R made from 'account 2', on any payments where this refund has not already been provided
- Pay 8% simple interest, from the date these payments were made until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 17 January 2022.

Kirsty Upton
Ombudsman