

## The complaint

A limited company which I'll refer to as 'B' complains about the actions of National Westminster Bank Plc as the recipient bank of funds B was tricked into sending as the result of a scam.

Mr S, who is a director of B, brings the complaint on B's behalf. For ease of reading, I'll mostly refer to Mr S, where I mean the company, B.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In February 2019 Mr S was sadly the victim of an email interception scam. He was making a payment to settle an invoice and the emails were interfered with and the account details were changed. This meant that instead of going to the genuine beneficiary that Mr S believed he was dealing with; the funds went to an account controlled by the scammer.

The payment went to an account with NatWest. When Mr S realised he'd been the victim of a scam he tried to recover his money from the NatWest account but was told that no funds remained.

A complaint was referred to our service and one of our Investigators recommended it should be upheld. In summary she thought NatWest could have acted sooner in relation to the activity on that account and that the loss could have been prevented. She recommended that NatWest refund B along with interest. NatWest ultimately accepted they could have done more, but they also felt that B too were partly responsible for the loss. They offered to refund 50%. Mr S didn't accept that offer and as agreement couldn't be found, the complaint has come to me to decide.

I've already issued a jurisdiction decision which explained the extent to which I was able to consider this complaint. And in February 2022 I issued a provisional decision in which I said:

*"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've reached a different outcome to our Investigator, so I'm issuing this provisional decision to allow everyone a further opportunity to comment.*

*Mr S' payment arrived in the beneficiary account on 4 February 2019. By this point the account had been open for a number of months with only very minimal activity. But it's not uncommon, given the nature of the account for it to be opened in advance of commencing regular use. That being said, I would expect NatWest to be alert to the activity on newly opened (or recently active) accounts as these present a greater risk compared to more established accounts.*

*I think it would be reasonable to have expected NatWest to have verified the first payment on the account on the evening of 4 February. The account had had little use in recent months. And this appears to have been the first time there was spending using the debit card associated with that account. There were several risks associated with this payment. The card might have been intercepted, lost, stolen or otherwise compromised, and there was a sudden change to the operation of the account. And the payment was for a relatively large amount for first time card use (£3,500). Given this I think it's reasonable to have expected NatWest to have confirmed it was a genuine instruction from the accountholder.*

*The checks are usually proportionate to the risks that a business is trying to mitigate. In this case I think the main risk was of card interception, so I think it's most likely that this would have taken the form of a text (SMS) message or other automated checking. And as the accountholder was most likely complicit in the scam in some way, it's probable they would have confirmed the activity to be genuine. I'm not persuaded that it's reasonable to have expected NatWest to have investigated further at that point.*

*There was further spending from the account on 5 February 2019. In particular there were two payments, only two minutes apart, each for around £4,000. I think that the second of these payments ought to have prompted NatWest to have intervened prior to releasing it. By that point I think the account activity is indicative of a potential pattern of fraud and the misappropriation of funds. Had NatWest then taken a closer look before releasing that second payment, they then would have noticed that the merchants with whom the funds were being spent, didn't match what might reasonably be expected given what they knew about their customer from their due diligence at account opening.*

*It's also likely that at this point NatWest would have noticed that there was a mismatch between the beneficiary name associated with the payment and the named accountholder. And whilst this wasn't something they were required to check when processing the payment, it would have been further evidence that something might be amiss.*

*I don't think NatWest's accountholder would have been able to provide a plausible explanation or proof of entitlement to the incoming payment from Mr S. As such, I think the funds remaining in the account at that time would have been recoverable. However, as there had already been a fair amount of spending which I don't think NatWest reasonably ought to have stopped, the preventable loss is £4,806.73. I also think it's appropriate that 8% simple interest be added to this amount to compensate B for being without those funds.*

*I've considered whether it's appropriate to make a reduction in award on the basis of contributory negligence as NatWest have suggested. I'm not persuaded that is appropriate in the circumstances of this complaint. I've seen a copy of the intercepted email and invoice; there is only a very subtle difference between the email address used and the genuine one. I also don't think the invoice had obviously been interfered with or amended. So, I don't think Mr S was negligent in not picking up on this at the time. Mr S has also confirmed that he's not received any redress from either his own sending bank or from any other source in relation to this payment.*

*I'm also aware that the offer NatWest have already made is greater than the redress I'm proposing in this decision. It's a matter for NatWest as to whether that offer is still available to be accepted. But for the reasons I've explained, I'm only intending to award the redress suggested below..."*

Mr S responded with some comments which I'll address below. NatWest responded to say they had nothing further to add.

## **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.

Mr S presented evidence of an invoice for around £1,200 that he'd paid to a solicitor to draft a letter of claim against NatWest. He asked if this expense could be considered as part of this complaint.

There is no requirement to use professional representation to use our service. And ultimately it was Mr S' decision to engage the services of a solicitor to draft a letter of claim for him and to include that in his submissions to us. I don't think there is any reasonable basis upon which I could tell NatWest they need to meet this cost.

As no further comments or evidence (beyond the above) were provided by either party, I see no reason to deviate from the outcome explained in my provisional decision.

## **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint in part.

National Westminster Bank Plc must pay B the equivalent of £4,806.73 in Euros and add to this amount 8% simple interest between the date of notification and the date of settlement. The conversion for the total redress should be based on the exchange rate on the date of notification.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 20 April 2022.

Richard Annandale  
**Ombudsman**