

The complaint

Mrs S is unhappy National Westminster Bank – Trading as Ulster Bank (“Ulster Bank”) hasn’t reimbursed the amount she lost when she fell victim to an impersonation scam.

What happened

The details of this complaint are well known to both parties, so I won’t go into too much detail here. However, in summary, Mrs S has been the victim of a scam.

She received a telephone call from someone who said they were calling from her landline telephone provider but who we now know to be a fraudster. The fraudster told Mrs S that there were issues with the security of her landline that meant hackers might be able to access her bank accounts and steal her money.

Mrs S has told us that the call took place on her landline. So, she doesn’t know the telephone number the fraudster called from, but she has told us that the person she spoke to sounded professional and knew information about her account. Mrs S says the fraudster also read out the genuine telephone number of her landline provider and told her to check this online, which she did. Unfortunately, as Mrs S was speaking with the fraudster on her landline, there was no way for her to verify that this was the number the person was calling from.

Mrs S was told she needed to update the security on her account. Thinking this was what she was doing, Mrs S was persuaded to download third-party viewing software which allowed the fraudsters access to her device. Mrs S was then told to log into her internet banking. Having gained access to her account, the fraudsters then made two payments from her account.

Whilst it is agreed that it was the fraudsters who made the payments now in question here, it’s also accepted that Mrs S was aware that at least the first payment was leaving her account - the fraudsters told Mrs S this was a ‘test’ payment. In order to authorise this payment, Mrs S generated a security code on her card-reader and gave this to the fraudsters and this ultimately allowed the first payment to be processed. The second payment was then processed without the need of an additional security code, as the new payee had already been set up on the account.

I have detailed the payments that left Mrs S’ account below:

- £19,000 on 3 December 2018
- £10,000 around 4 hours later – this payment takes Mrs S into an unarranged overdraft

Mrs S has said that throughout her conversations with the fraudster, she was satisfied that she was speaking to a professional and improving the security of her landline. However, shortly after the payments had left her account, Mrs S spoke to her Financial Advisor who

told her that what had happened sounded like a scam. Mrs S then contacted Ulster Bank and it was at this point that Mrs S was informed about the second payment leaving her account. This payment had taken Mrs S' account into an unauthorised overdraft amounting to £9,500.

Ulster Bank acknowledged that Mrs S had been the victim of a scam, but it declined to offer her a full refund of the amount lost. However, it did 'write-off' the unauthorised overdraft amount.

Ulster Bank went on to say that Mrs S had shared her account security information with the fraudster, and this had broken the terms and conditions of her account. For this reason, it didn't think it should be held liable for the success of the scam now. It went on to say that it had got in touch with the receiving bank where Mrs S' funds were paid to immediately upon notification of the scam, but unfortunately, by this point, the majority of Mrs S' funds had been removed, and Ulster Bank was only able to recover around £20.

Unhappy with Ulster Banks response, Mrs S brought her complaint to this service and one of our investigators looked into things.

Our investigator thought that the two scam payments were unusual when compared to Mrs S' normal account activity – they were high in value and the first had been made to a new payee following a large transfer into the account. And the second had taken Mrs S into a significant unarranged overdraft, which she'd never had before. And so, our investigator thought Ulster Bank should have contacted Mrs S about the payments before it agreed to process them on her behalf and if it had, the scam could've been prevented. However, she went on to say that she also thought Mrs S should bear some responsibility for the success of the scam too as she had not sought to verify who she was speaking with, and she had shared her account security information to allow the payments to be made.

Ulster Bank agreed with the investigator's opinion, but Mrs S did not. She said that she was a lay person and shouldn't be held to the same standard as the bank. She said the success of the scam was solely down to Ulster Banks failure to pick up on and prevent what were clearly out of character transactions on her account.

Our investigator didn't change her mind and as an agreement could not be reached, the complaint has now been passed to me for a final decision.

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, 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I

think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Having considered the submissions from both Mrs S and Ulster Bank, I agree with the outcome reached by the investigator so far as to say I think it's fair that both Mrs S and Ulster Bank share responsibility for the success of the scam. I'll explain why in more detail below.

Ulster Banks obligations

The starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Ulster Bank should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

This means that there are circumstances where a bank should fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

So, in this case, I need to decide whether Ulster Bank acted fairly and reasonably in its dealings with Mrs S when she allowed £29,000 to be transferred out of her account to a fraudster and when she reported the scam, or whether it should have done more than it did.

As Mrs S was aware that at least the first payment was leaving her account and she shared some of her account security information to allow the payments now in question here to leave her account, I'm satisfied that the transactions can be considered as consented to or otherwise authorised by Mrs S. Because of this, Ulster Bank had an obligation to make the payments on her behalf. But there are some situations in which it should reasonably have had a closer look at the circumstances surrounding the payments - as I've explained above.

I consider that as a matter of good practice Ulster Bank should've been on the lookout for unusual and out of character transactions. And I'm satisfied that the first payment of £19,000 was unusual for this account when compared to Mrs S' previous account activity. It is of a high value and it is being made to a new payee. And so, I'm persuaded that it should've prompted further action from Ulster Bank. I think Ulster Bank should've got in touch with Mrs S prior to processing the payment. And, I think had they got in touch, it's most likely the scam would've been uncovered.

I say this because, I'm satisfied that some basic questions surrounding who Mrs S was paying would've quickly uncovered that Mrs S was likely falling victim to a common impersonation scam that involves fraudsters pretending to be from a genuine landline

provider. And Ulster Bank would've been able to tell Mrs S that no legitimate organisation would contact her and ask her to move money from her accounts for the reasons she'd been given. I see no reason to doubt that having been able to discuss the common features of this type of scam, Mrs S would've been dissuaded from continuing from making the payment(s).

And so, my starting position here is that Ulster Bank should offer Mrs S a full refund of the payments made to the fraudsters – minus the amount already written off. But that is not the end of the story. I also have to think about whether Mrs S should also bear some responsibility for her overall loss. And, in the particular circumstances of this case, I think she should.

In reaching this conclusion, I've had regard to the scene that was set by the fraudsters and the impact I believe this reasonably had on Mrs S when acting 'in the moment'. I'll explain why:

- Mrs S appears to have believed what she was being told by the fraudsters without trying to independently verify the information they were giving her. And she accepted that she was speaking with her landline provider without verification too. She's told us that she did so because the caller sounded professional and because whomever she was speaking with knew some of the details of the account she held with the genuine provider in question. However, it doesn't appear that Mrs S carried out any checks on the caller at all before proceeding to make these payments – she simply took what she was being told at face value.
- I accept what Mrs S has said about the fraudster reading out the number for her genuine landline provider and that Mrs S checked that this was in fact the correct number. But as the fraudster was calling on her landline, there was no way for Mrs S to verify that this was number the fraudster was calling from.
- It's unclear how any potential hackers could've used Mr M's landline to access her bank accounts and so it's unclear why Mrs S found this story plausible.
- Mrs S's landline provider wouldn't generally play a role in preventing crime or need its customers to access their personal bank accounts. And I'm satisfied that this should have struck Mrs S as unusual. It would be her bank that dealt with any potential threats of fraud on her account, not her landline provider.
- It's unclear why Mrs S's landline provider would need a customer to complete a "test" payment out of their bank account in order to check the security of her connection. But Mrs S doesn't appear to have questioned this.

Overall, I'm satisfied that there were a number of things here that should have caused Mrs S concern. And so, I'm satisfied that Mrs S has failed to mitigate her own losses and therefore any award now put forward should reflect that she should bear some responsibility for her loss alongside Ulster Bank.

Recovery of funds

I've also thought about whether Ulster Bank could've done more to help Mrs S once it was notified of the scam but I don't think it could.

I think Ulster Bank could've acted sooner than it ultimately did but even if it had, I don't think this would've made a difference to the overall outcome of this complaint. I say this because nearly all of Mrs S's funds were utilised as soon as they were received into the fraudsters account, as is common with this type of scam, only around £20 remained. So, there was nothing Ulster Bank could've done to recover any further funds on behalf of Mrs S.

Summary

For the reasons set out above, I'm satisfied that the most fair and reasonable outcome is for Ulster Bank and Mrs S to share responsibility for the success of this scam. I think this settlement reflects that Ulster Bank could've done more to prevent the success of the scam but at the same time, Mrs S could've done more too.

Finally, I want to stress that I'm really very sorry to hear about what's happened to Mrs S. I have significant sympathy for the situation she found herself in. But having thought very carefully about what she's told us happened at the time and Ulster Bank's actions, I'm not persuaded it would be fair and reasonable for me to hold Ulster Bank solely liable for her losses.

Putting things right

In order to put things right for Mrs S, National Westminster Bank – trading as Ulster Bank Plc should:

- refund Mrs S 50% of her overall loss - taking into account any refunds already paid

As both Mrs S' savings and current account were used to facilitate the payments to the scam, National Westminster Bank – trading as Ulster Bank Plc should:

- pay 8% simple interest on the £500 that would've remained in Mrs S current account from the date of payment to the date of settlement,
- pay interest at the savings account rate on the remaining balance from the date of payment to the date of settlement, and;
- refund Mrs S 50% of the amount recovered from the receiving bank plus 8% simple interest from the time this amount was recovered, to the date of settlement.

My final decision

My final decision is that I partially uphold this complaint against National Westminster Bank Plc – trading as Ulster Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 October 2023.

Emly Hanley Hayes
Ombudsman