

The complaint

A company which I will refer to as 'L', complains that National Westminster Bank Plc won't reimburse the money the company lost following an Authorised Push Payment (APP) scam.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in July 2022, a scammer contacted a staff member of L impersonating as their bank (NatWest). They successfully persuaded the staff member to make four payments out of L's account, totalling about £65,000, on the pretext of protecting the account from some unauthorised activities noticed by the 'bank'. Soon after the payments were made, the staff became suspicious and contacted NatWest at which point the scam came to light.

NatWest attempted to recover the funds which had gone to two different banks but unfortunately only a very small amount could be recovered.

L said that they had governance procedures in place when they make payments to the suppliers. However, this situation was different and their staff member acted in good faith. They said that this was an unusual series of transactions that NatWest should have flagged up and queried L. Had it done so, the scam would have come to light.

NatWest did not agree. In essence it said that the payments were not materially out of character for the account for the bank to have intervened when they were made. And on being advised of the scam, the bank quickly contacted the recipient's bank, but unfortunately only nominal funds could be recovered.

One of our investigators reviewed the complaint and concluded that it couldn't be upheld. They said that NatWest correctly followed L's payment instructions. The payments weren't particularly unusual or suspicious considering the company's normal account activity.

There was some confusion as to whether the last payment was made after L advised the bank of the scam. The investigator clarified that wasn't the case. That payment did go out before L contacted NatWest.

L asked for the case to be referred to an ombudsman. They reiterated that the payments were unusual and so the bank ought to have intervened.

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.

Having done so, I agree with the Investigator, essentially for the same reasons.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. However, there are circumstances where it might be appropriate for banks to take additional steps – as for example have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud.

I have reviewed L's account statements for several months prior to the payment to the scammer, to understand the general account activity. I see that this was an active account. There were several prior payments similar in size to the disputed ones. As such I can't say that the relevant payments ought to have stood out as unusual in terms of size. The payments were made to two new payees. However, given the substantial activity on the account, I am not persuaded that itself ought to have been a cause for concern to the bank.

L says that the larger payments in the past were all made to businesses whereas the disputed payments were made to individuals. They say that they do make payments to individuals, but they all tend to be considerably of lower value. However, even if the bank was able to distinguish between payments to individuals and payments to businesses, the account did regularly pay out to a number of individuals and occasional higher payments could happen.

Further, the staff has acknowledged that when the payments were set up and made, they were presented with a warning. It appears that the scammer advised them to ignore the warning.

The bank says that depending upon the customer choosing a payment purpose from a menu of options, a tailored warning would be provided. It is unable to say in this instance which option the staff member chose. However, it has provided a list of payment purposes and what warning would have been provided for what payment purpose. The list includes 'paying friend or family', 'paying a bill' and 'moving money to one of my other account'. As I said, it is not known which option the staff member chose. But it seems more likely that they would have chosen 'moving money to one of my other account' as that was the option which best fit the situation. If so, I can see that the warning was tailored to that situation.

It was a sophisticated scam, and I can see why L's staff was persuaded that they were doing the right thing. However, what I am considering here is whether the loss to L was caused by any error or omission by the bank.

Ultimately, it is a matter for NatWest as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss which resulted from an authorised push payment fraud, I will look into the circumstances of the case and based on what I have seen, decide whether in that case the bank could have fairly and reasonably done more.

After taking all of the above into account, I can't say that the disputed payments stood out sufficiently from the prior account activity to reasonably have prompted the bank to take further action. I'm not persuaded that there was enough here for me to find the bank was at fault in carrying out L's payment instruction in line with its primary obligation to do so. Further, from what I can see, there was no delay on part of the bank in contacting the recipients' banks on being advised of the scam.

On some occasions, it's possible to consider whether a customer is covered under the Contingent Reimbursement Mode Code. However, L aren't not covered by the Code. Where

the customer is a business (as in this case), the Code only applies if they were a micro-enterprise at the time the transaction took place.

For this purpose, a micro-enterprise is essentially an enterprise which employs fewer than 10 persons. And if they employ fewer than 10 persons, then at least one of their annual turnover or total gross assets should not exceed €2 million.

In this case L isn't a *micro-enterprise* as it employed more than 10 persons at the relevant time. So unfortunately, it isn't covered by the CRM Code either.

I appreciate why L strongly consider that NatWest should reimburse their loss. But I can only make an award against a bank if that bank has done something wrong, which has led to the loss. In this case, for the reasons given, I don't think that there was any error or omission on part of NatWest. As such I can't fairly ask it to reimburse L's loss.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 11 March 2024.

Raj Varadarajan
Ombudsman