

The complaint

Mr N complains that National Westminster Bank Plc ('NatWest') hasn't refunded all the money he lost when he fell victim to a scam.

What happened

Mr N is represented in this case but for ease I'll refer to Mr N throughout this decision.

Mr N says that his family live abroad and he wished to bring them to the UK. He discussed the situation with an acquaintance who advised him that he knew of a good solicitor who could help him apply for visas for them. Mr N was introduced to someone I'll refer to as M who said he worked for a law firm I'll refer to as R. Mr N communicated with M through a social networking site and then a messaging service. M agreed to meet Mr N in a city near where he lived as M's office was further away and Mr N doesn't have a car. When they met Mr N says he completed some documents and the following day M started to ask him for money for his fees.

Mr N asked for updates and evidence of a Home Office application but didn't receive anything. When M stopped responding he realised he was the victim of a scam.

Mr N made the following payments to an account in the name of R:

Transaction	Date	Amount
1	28/05/22	£850
2	30/05/22	£4,200
3	16/06/22	£360
4	17/07/22	£2,236
	Total	£7,646

Mr N didn't report what had happened to NatWest but instructed a representative to complain in December 2022.

NatWest said it needed Mr N to contact it to discuss his fraud claim.

When NatWest sent this service its file it said Mr N authorised the transactions and was provided with a warning when the first payment was made.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. She assessed Mr N's complaint in accordance with The Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and said that he had a reasonable basis for belief in respect of the first payment only. So, for this first payment, NatWest didn't need to provide an effective warning as no scam risk was identified, meaning this transaction should be reimbursed in full. The investigator went on to say that NatWest didn't meet its standards under the CRM Code in respect of the second payment and could fairly rely on an exception to reimbursement. This meant Mr N should be refunded 50% of this payment. In respect of the last two transactions, the investigator said NatWest met its standards as it didn't need to

provide an effective warning and fairly relied on an exclusion to reimbursement set out in the CRM Code. This meant that NatWest had no liability to Mr N for these transactions.

NatWest accepted the investigator's findings, but Mr N did not, so his complaint has been passed to me to decide. In summary, he said:

- If NatWest had provided an effective warning when the first payment was made as Mr N said it should have, subsequent payments wouldn't have been made. Because of this, NatWest should refund these subsequent payments.
- The investigator's view isn't in line with the CRM Code.
- None of the exceptions to reimbursement set out in the CRM Code apply.

I contacted Mr N's representative to explain why I thought the investigator had correctly interpreted the CRM Code. Mr N didn't agree so I am issuing a 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.

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

There's no dispute here that Mr N was tricked into making the payments. But this isn't enough for him to receive a refund of the money under the CRM Code. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- 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
- The customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

Mr N's representative has suggested that he was vulnerable at the time of the scam because he doesn't speak fluent English which would have made it more difficult for him to investigate whether the scammer was legitimate. If Mr N was vulnerable as set out in the CRM Code, he would be entitled to full reimbursement without considering the exceptions I have listed above.

I agree with the investigator that whilst Mr N's lack of understanding had some impact and should be taken into account when considering whether an exception to reimbursement applies, he wasn't unable to protect himself from the scam and so wasn't vulnerable as set out in the CRM Code. He has said that he looked at reviews and had previously instructed a different individual to help with the visa applications but had received a refund when he didn't wish to provide certain documentation. Mr N approached M of his own volition and there was no time pressure involved.

Did Mr N have a reasonable basis for belief?

Taking into account all of the circumstances of this case, including the characteristics of Mr N and the complexity of the scam, I think NatWest can fairly rely on an exception to reimbursement set out in the CRM Code in respect of all but the first transaction. I'm not satisfied that he had a reasonable basis for believing the payment was for genuine services after this.

When Mr N made the first payment of £850, he had just met M in person and says he completed forms with him. And paying a fee in advance isn't unusual when engaging a solicitor. Like the investigator, I consider these points would have been persuasive enough when making an initial payment. But I think that after he'd made the initial payment Mr N ought reasonably to have taken some additional steps before making further payments.

I don't think Mr N had a reasonable basis for believing that M was legitimate or that the remaining payments were for a genuine service in respect of payment two onwards because:

- The person who referred Mr N to M was described in his representative's letter of complaint as an "*acquaintance*" rather than a friend and there was no suggestion M had helped this acquaintance.
- M said he worked for a company called R. R doesn't appear to have a website which I think is very strange for a law firm.
- Solicitors don't usually communicate with clients via a social networking site or a messaging service.
- Mr N didn't receive any documentation from M to set out the nature of their agreement and the amount Mr N would be required to pay. This is very unusual, and I think ought reasonably to have been a red flag that something wasn't right.
- Mr N made further payments without seeing any evidence of the work that had been completed on his behalf.
- Mr N hadn't been to M's office so didn't have the reassurance this would have brought.
- Mr N had paid another individual £10,400 which he says was also for visas shortly before the scam transactions. He says he received a refund of this amount because the individual he paid asked for documentation he didn't want to provide. I think Mr N ought to have had concerns that M said he could obtain visas without this documentation.

Should NatWest have provided effective warnings or intervened?

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement can be fairly applied (as is the case here). Those requirements include the provision of what the Code defines as an "Effective Warning" when a firm identifies an APP scam risk in relation to a payment.

The CRM Code requires that warnings be both specific to the scam risk identified and impactful – to positively affect a customer's decision-making in such a way that the likelihood of an APP scam succeeding is reduced. The CRM Code goes on to say this should include steps to ensure that the customer can reasonably understand the consequences of continuing with an irrevocable payment.

I'm not persuaded that NatWest ought reasonably to have identified an APP scam risk when Mr N made payments one, three and four. The value of each transaction was relatively low, and I don't consider the pattern of transactions was consistent with common scams. This means that under the CRM Code, NatWest met its standards in respect of these transactions. But I think the position was different when Mr N made payment three. The value of this transaction was greater, and Mr N had made another payment a few days before when he set up the payee.

In its submission to this service NatWest said Mr N would have been provided with a warning when he made the first payment only. This means that Mr N wasn't given a warning at all in respect of the third transaction, so the warning wasn't effective, and Mr N didn't ignore it.

The CRM Code sets out how a scam victim should be reimbursed. Where an exception to reimbursement doesn't apply a customer should receive a full refund. So NatWest should refund all of payment one. Where an exception to reimbursement applies and a firm hasn't met its standards, a customer should receive 50% of their loss (*"Where one Firm only has breached the SF and an exception under R2(1) or R2(2)(b) applies, the Customer will receive a 50% reimbursement from the Firm that breached the SF"*). So, Mr N should be reimbursed 50% of payment two. Where an exception to reimbursement applies and a firm has met its standards the firm isn't liable under the CRM Code, so no refund is due in respect of payments three and four.

I've gone on to consider NatWest's wider obligations to look out for unusual and out of character transactions. But I don't consider any of the transactions Mr N made were so unusual and suspicious that NatWest ought reasonably to have intervened and discussed them with Mr N. I say this partly because shortly before Mr N made a payment for over £10,000 so the transactions Mr N made as part of the scam wouldn't have stood out.

Mr N's representative has argued that if an effective warning was given at an early stage, Mr N's future losses would have been prevented so Mr N should be reimbursed for later payments. This isn't how the CRM Code works though. If I thought NatWest should have intervened based on a transaction being unusual the position would be different, but I have said above that I don't consider NatWest needed to intervene at any point.

I've thought about whether NatWest could have done more to recover Mr N's funds. I note the transactions were made between May and July 2022, but the scam wasn't reported to NatWest until December 2022. Given that scammers usually move money out of the account rapidly, I consider it highly unlikely that any funds remained by the time Mr N complained to NatWest.

Overall, whilst I'm sorry to hear about Mr N's loss, I can't reasonably ask NatWest to provide a full refund.

My final decision

For the reasons set out I require National Westminster Bank Plc to:

- Pay Mr N £2,950; and
- Pay interest on the above amount at the rate of 8% simple per year from the date NatWest made its decision not to reimburse to the date of settlement.

If NatWest considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr N how much it has taken off. It should also give Mr N a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 March 2024.

Jay Hadfield
Ombudsman