

The complaint

Mrs P complains that National Westminster Bank Plc (“NatWest”) won’t refund money she lost when she fell victim to an investment scam.

Mrs P is being represented by solicitors in her complaint.

What happened

The detailed background to this complaint is well known to both parties and has been previously set out by the investigator in their assessment. So, I won’t repeat it again here. Instead, I’ll focus on giving my reasons for my decision.

The complaint concerns several transactions totalling £32,000 which Mrs P made from her NatWest account to her accounts with two electronic money institutions in October 2022. They were made in connection with an investment opportunity that subsequently turned out to be a scam.

As part of the scam, Mrs P took out a personal loan for £25,000 with NatWest which she used to fund most of the disputed payments.

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 conclusions reached by the investigator for these reasons:

- The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There’s no dispute that Mrs P made the payments using her security credentials, and so they are authorised. But a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert it to potential fraud or financial crime, it might be fair and reasonable for to hold it liable for losses incurred by its customer as a result.
- I’ve looked at the operation of Mrs P’s account and I don’t consider the individual disputed amounts to be out of character for the account activity. As the investigator explained, there were several transactions for similar amounts from Mrs P’s account at the start of the year which spanned over a period. These came to form part of the account spending pattern. But we know that a transaction for £9,000 on 25 October did flag as suspicious on NatWest’s fraud detection systems. The bank blocked the transaction and made enquiries about it with Mrs P. So, I’ve gone to consider whether its intervention went far enough. But for the completeness of my review, I don’t consider any of the earlier transactions ought to have flagged as suspicious such that I think NatWest should have been concerned.

- I've listened to a recording of the relevant call. The agent told Mrs P that the bank was a bit concerned about the transaction in question as it had flagged as high risk. They established that in the last fortnight, Mrs P had moved money between her accounts. And while moving money between accounts could be for genuine reasons, scams were on the rise. The agent asked Mrs P why she was transferring funds to her account with another firm, and Mrs P explained it was to cover the cost of different things that needed doing to her house. Mrs P elaborated that gas needed putting in and electrics needed rewiring.
- It is clear from Mrs P's answers that she wasn't being honest about the true purpose of the payment she'd attempted to make. She's since told our service that she was coached to lie to her bank if questioned about the payments. The agent didn't release the payment on that occasion. Instead, they asked Mrs P to visit her local NatWest branch with photo ID and evidence of the beneficiary account being in her control. Mrs P did that the following day but needed to speak to NatWest's fraud team again when she attempted to make the transaction for the second time.
- I've listened to a recording of that call. The agent told Mrs P they could see a note left by the branch staff confirming that she'd visited a NatWest branch and provided the information as requested. The agent asked Mrs P if she had given permission to a third party to take money from her account and whether she was aware her laptop/PC was being accessed remotely. Mrs P told the agent she hadn't given permission to a third party to taking money from her account. She also said she was using her work computer and remote access was in connection with work. The agent went on to explain that remote access was often used by scammers, and Mrs P said her work computer was quite secure. When asked about the payment purpose, Mrs P again said that she was getting home improvement work done on her property. The agent asked her if she had booked someone in for the works and Mrs P said she was in the process of getting quotes.
- The agent then said to Mrs P that fraudsters often asked victims to send money to the firm in question, as it was easy to move it again. She reassured them that it was nothing like that; that she was switched on to scams like that and she'd had a recent experience with her account with another bank. Mrs P confirmed that she'd set up the account she was sending the money to, and that it was solely in her control. Following this, the payment was released.
- I've thought very carefully about the intervention calls and how Mrs P responded to the bank's questions. I find that NatWest sufficiently probed Mrs P about the flagged transactions. And in the second intervention call, the agent explained the typical hallmarks of a scam such as remote access or being asked to move money to different accounts. I find that that some of the comments made by the agent ought to have resonated with Mrs P as they applied to her circumstances. But Mrs P reassured the bank that it had no reason to be concerned. It's unclear whether the cover story she provided NatWest had been given to her by the scammer or something she came up on her own. Regardless, she wasn't honest with the bank when it made enquiries. In the circumstances, I find that NatWest couldn't have done more to prevent the scam and limit her losses.
- Mrs P's representative submits that our service has acknowledged Mrs P was the victim of a sophisticated scam, but on the other hand we're saying she misled the bank. The representative argues that this is how the scam works. I've carefully considered the argument put forward. While I acknowledge that the bank's agents could have questioned Mrs P further – it's easy to be critical with the benefit of

hindsight – I find that the intervention was sufficient in the circumstances of this case. The bank isn't expected to play an amateur detective in such situations. I consider that the calls served the purpose of identifying a fraud risk and providing a scam warning. Although NatWest had identified red flags, it still fell on Mrs P to utilise the information she'd been given by the agents to decide whether what she had been told applied to her circumstances. Unfortunately, it seems she remained under the spell of the scammer despite NatWest's intervention.

- Mrs P's representative has also said that a few months prior to making the disputed payments, Mrs P contacted NatWest and sought advice regarding an investment where she'd been asked to install remote access software. It is alleged that the bank didn't display proactive interest in safeguarding Mrs P's interest. In general terms, it isn't the bank's role to give investment advice. If the concern here is the involvement of remote access software and whether the bank should have probed further, I'm mindful that Mrs P was directly asked about remote access during the second intervention call (on 26 October). But she didn't raise any concerns when this was brought to her attention, or when she was told fraudsters often used such software to facilitate scams.
- I've also considered Mrs P's representative's submission that the Banking Protocol should have been invoked here. The Banking Protocol is aimed at the branch staff in identifying customers who are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds. In Mrs P's case, the payment was made through mobile banking. Strictly speaking, the Banking Protocol doesn't apply here. In any event, given the reassurances Mrs P provided to the bank during the intervention calls, and given she hadn't yet made payments from the account she was sending the money to when she visited the branch with evidence of ownership of that account, I don't think there was any reason for the bank to have remained concerned so much so that I consider it would have been prudent to invoke the Banking Protocol.

I know that Mrs P will be disappointed with this outcome. Not least because the matter has been ongoing for some time. I recognise that a significant sum of money has been lost to a third party and this incident has impacted Mrs P both emotionally and financially. Despite my natural sympathy for the situation in which she finds herself, for the reasons given, it wouldn't be fair of me to hold NatWest responsible for her loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 27 June 2024.

Gagandeep Singh
Ombudsman