

The complaint

Mr E complains that National Westminster Bank Plc (“NatWest”) is unfairly holding him liable for a loan he says he didn’t take out.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything here. In summary, Mr E says he fell victim to an investment scam in November 2021 after he engaged with an investment broker – “C” – who encouraged him to investment trading.

As part of the scam, Mr E says C took out a £15,000 loan in his name with his bank NatWest without his knowledge or consent. Mr E says this happened after he granted remote access to his mobile to C. The funds were paid into his NatWest account and subsequently transferred out to another account in Mr E’s name, before being transferred out to an account in C’s control.

Mr E says he first contacted NatWest about being scammed around March 2022, before chasing the bank several times and ultimately complaining. NatWest apologised for not communicating its outcome to his identity theft claim sooner and paid £75 compensation for this. However, NatWest didn’t believe that Mr E was unaware of the loan as he’d told the bank the loan was taken out with the intention of trading. And the funds went to a personal account in his name, before being transferred to a third party. As a result, NatWest said it would still be holding Mr E liable. Unhappy with this, Mr E referred the matter to our service.

Our investigator didn’t uphold the complaint. They were satisfied that Mr E would have likely known that a loan had been taken out on his behalf, and that he would have known he was paying the loan funds to C via another account in his name. Mr E disagreed, so the matter has been passed to me to decide.

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 as I don’t think NatWest has acted unfairly or unreasonably in holding Mr E liable to repay the loan. I’ll explain why.

Section 83 of the Consumer Credit Act (CCA) 1974 sets out that a person won’t be held liable for a debt if it was taken out by another person who wasn’t acting as their agent. So, I’ve considered the extent to which Mr E was involved in the loan application with NatWest, and whether he ought reasonably to have known that he had received the proceeds of a loan into his account.

I accept it’s possible that Mr E didn’t complete the loan application himself, and that it could have been completed by C when he gave them remote access to his mobile. But that doesn’t mean Mr E can’t fairly or reasonably be held liable to repay it if the evidence shows

that, on balance, he knew that finance was being taken out on his behalf, and if he knowingly received and utilised the funds.

As the investigator has highlighted, and I agree, Mr E would have likely seen what C was doing on his mobile when he granted them control. Also, it is my understanding that Mr E would have needed to log on to his NatWest account before the loan application was completed and submitted. We've not been told that he shared his security credentials with C, so it seems to me that Mr E was involved in the logging-in process and would have therefore seen and navigated through the screens on the banking app.

Even if I'm wrong about that, I'm satisfied Mr E was aware of the loan proceeds. I say this because: the loan documentation was to the email address held on NatWest's system which belongs to Mr E; the funds were paid into his later that day and remained there until the next day; there's log in activity on his account the next day and this is when the funds were transferred out to another account in Mr E's name.

Given the account log-in over two days – the loan application one day and the funds transfer the next – I don't consider Mr E's testimony regarding his awareness of the loan to be plausible. I'm more persuaded that he was aware of that a loan had been taken out and had some form of involvement in the application process. I also find it unlikely that the loan funds could have been moved out of his NatWest account the next day without his involvement in some way.

Overall, I think NatWest has entered into this agreement in good faith with no reason to doubt it was applied for by Mr E. And it seems likely Mr E was then involved in passing on the loan funds, with awareness they were from a loan in his name. In the circumstances, regardless of whether Mr E has received any 'real' benefit from the loan, or was tricked in some way, I consider it fair for NatWest to hold Mr E liable for the loan.

I appreciate this leaves Mr E in a difficult position. If he's struggling to repay the lending and hasn't already contacted NatWest about his financial circumstances, then I would urge him to do so. Lenders are expected to treat customers in financial difficulties with forbearance and due consideration.

I recognise that this outcome will come as a disappointment to Mr E. But overall, I'm not persuaded NatWest has acted unfairly or unreasonably in holding him liable to repay the loan.

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 Mr E to accept or reject my decision before 10 May 2024.

Gagandeep Singh
Ombudsman