

The complaint

Company ('F') complains that National Westminster Bank Plc (NatWest) is holding it responsible for transactions which it says it didn't authorise. 'F' is also unhappy that NatWest allowed the transactions to be processed without intervention.

Mr C is representing 'F' for the purposes of this complaint. So, for ease, I'll refer to Mr C throughout this decision.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

The disputed transactions are as follows:

Date	Amount
12 January 2023	£600
12 January 2023	£4,000
16 January 2023	£250
19 January 2023	£350
20 January 2023	£8,000
20 January 2023	£400
20 January 2023	£15,000
23 January 2023	£750
23 January 2023	£16,000
Total	£45,350

Mr C says the beneficiary of the disputed transactions; and the person who made them - was the office manager (Mr F) who was responsible for the company accounts. Mr C confirmed that Mr F had full access to the NatWest business account, including his online banking details.

NatWest declined to refund the transactions. It said the payments were all made to an already established payee (Mr F) and genuine transactions had been made to this payee before.

NatWest said all the transactions were made using Mr C's online banking login ID and password, which it said Mr C had shared with Mr F. NatWest said this was a breach of the online banking terms and conditions.

NatWest said the transactions didn't flag as unusual or suspicious due to several factors. This included them going to an existing payee, the genuine login details being used, and similarly large transactions being made from the account in the past.

Mr C didn't accept NatWest's response and referred his complaint to the Financial Ombudsman. He maintained that NatWest was at fault for allowing over £45,000 to be

transferred from his account without intervention. He also maintained that the transactions had not been authorised by him or the other company director.

One of our Investigators considered the complaint and didn't uphold it. In short, she said Mr C had consented to the transactions by way of *apparent authority*. And she didn't think the payments were sufficiently unusual or suspicious to say NatWest missed an opportunity to intervene.

Mr C didn't agree and so the complaint has been passed to me to decide. He said he didn't give consent to Mr F to 'steal' over £45,000.

Mr C also said whilst there were similar previous amounts leaving the account to those in dispute – those had been transferred to other businesses, not to Mr F. Therefore, he thought NatWest should've picked up on the transactions to Mr F as being suspicious.

Mr C said that the payment limit on the account was £20,000 a day. He said if NatWest had applied that limit, as he said it had done previously, it could've alerted him to the transactions made on 20 and 23 January 2023 and minimised his loss.

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 our Investigator, and for largely the same reasons. I'll explain why.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I've ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

In line with the Payment Services Regulations 2017 (PSRs), consumers are liable for payments they authorise. NatWest is expected to process authorised payment instructions without undue delay.

The PSRs explain that authorisation depends on whether the payment transaction was authenticated correctly and whether the consumer consented to it. If a consumer has permitted a third party to appear as if they have the consumer's authority to make payment transactions (by way of *apparent authority*), those payment transactions will likely be authorised even where the consumer didn't ask the third party to make any payments or know about them.

It's not in dispute that the transactions were authenticated by Mr F using the legitimate online banking login and password for Mr C's account. Mr C has also been consistent in his testimony that he'd provided Mr F with his online banking login details to enable him to manage the company accounts – which also included being permitted to make transactions out of the account.

I fully appreciate that Mr C didn't '*consent*' to Mr F's apparent abuse of his position – nor do I doubt the impact this financial loss has had on Mr C. But in the context of this complaint, and the terms of the PSRs - I'm satisfied that Mr C provided Mr F with *apparent authority* to make transactions on his behalf and as such, consented to the disputed transactions.

I've gone on to think about whether NatWest should've intervened in the transactions. There are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character or suspicious.

With that in mind, I've looked back over Mr C's bank statements for the seven months prior to the disputed transactions. Firstly, I appreciate the transactions contributed to the account going overdrawn. But I can see the account had been overdrawn previously – notably in June, July, August and December 2022. So, I don't think the account going overdrawn in January 2023 would've likely flagged with NatWest as unusual.

I've looked next at the transaction amounts themselves. I appreciate that overall Mr C has lost over £45,000, which is a significant amount of money. But this amount wasn't paid in one large or 'out of character' transaction. It was spread over separate smaller increments made over the course of several days which, in my judgement, would not have appeared particularly out of character or suspicious to NatWest when compared with Mr C's spending history. I'll explain why.

The transactions made on 12, 16 and 19 January 2023 are relatively low in value and are very much in keeping with similar transactions made on the account in the previous seven months. And there are also several occasions when multiple transactions are made on the same day – as was the case here. So, I don't think these transactions (individually or collectively) would've been of obvious concern to NatWest.

The transactions on 20 and 23 January 2023 are arguably more significant - with a total of £23,400 being transferred on 20 January 2023 and a further £16,750 three days later.

But I can see from the account statements that similar individual transactions had been made from the account before (albeit not to Mr F); and Mr C doesn't dispute that. When also looking at transactions made in any 24-hour period, I can see that a total of just under £30,000 was transferred from the account on 8 July 2022, more than £25,000 on 6 September 2022 and over £47,000 on 26 September 2022. There was also a one-off transaction for £30,000 on 23 September 2022. All this suggests to me that it was reasonable of NatWest not to flag the transactions made on 20 and 23 January 2023 by Mr F, because they don't obviously stand out as unusual or suspicious in relation to the payment amounts.

It's also accepted that those transactions weren't made to Mr F – and that the majority were made to businesses – rather than individuals. But I can see Mr F was an existing payee on the account and that he received regular payments from the account. So, on balance, I don't think the January 2023 transactions to Mr F – as an existing payee – would've likely appeared unusual or suspicious to NatWest in the context of who the transactions were being made to – irrespective of whether amounts of this size had been paid to Mr F before.

Finally, Mr C has said NatWest failed to apply a £20,000 daily payment limit to his account which, he said, could've prevented some of his loss. Our Investigator asked NatWest and Mr C for more information on this. NatWest said the daily limit on the account had always been £50,000 – and provided evidence to support that. It said it hadn't previously stopped payments exceeding £20,000 as Mr C had suggested. Mr C contended that the daily limit at the time of the disputed transactions was £20,000.

I've thought about this point carefully, but I've not seen *any* evidence to confirm a £20,000 daily limit was in place at the time the disputed transactions were made. I've also seen several occasions in the account history where more than £20,000 was paid out in one day (as I've outlined above) – and NatWest has confirmed that those payments were processed

without intervention. So, I can't conclude that NatWest should've flagged the payments made on 20 January 2023 because they exceeded £20,000.

On taking everything into account, it follows that in my judgement Mr C authorised the transactions by consenting to Mr F making them on his behalf. And I don't think NatWest had a reasonable basis to question the circumstances of the transactions. So, I won't be asking NatWest to take any further action in this regard.

This is a difficult message for me to give as I know how strongly Mr C feels about this matter. But given the evidence I have, I'm unable to reasonably reach any other conclusion in the circumstances of this complaint.

So, taking everything into account, I don't think NatWest needs to take any further action.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision **before 16 April 2024**.

Anna Jackson
Ombudsman