

The complaint

Mr L is unhappy that National Westminster Bank Plc ("NatWest") is holding him liable for payments he says he didn't make.

What happened

Mr L had two accounts with NatWest. In 2019 Mr L says he was contacted by someone claiming to be calling from his mobile phone network. They were scammers and obtained Mr L's account information. Shortly after this happened he says he lost his NatWest bank card.

On 10 October 2019 Mr L paid a cheque for around £4700 into one of his NatWest accounts. Over the next two days these funds were transferred to several recipients and to another of Mr L's own NatWest accounts. The cheque was returned unpaid and on 30 October 2019 around £4,750 was debited from Mr L's account.

On 28 October 2019 a second foreign cheque for around £4,700 was paid into one of Mr L's accounts. The same day the funds were transferred to several recipients and to another of Mr L's own accounts with another bank. This cheque was returned unpaid and on 26 November 2019 the money was debited from Mr L's account.

On 27 November 2019 a further foreign cheque for around £4,600 was credited to one of Mr L's NatWest accounts. This was returned unpaid and debited from the account on 5 December 2019. This left one of Mr L's accounts overdrawn by around £4,800.

Mr L says he didn't recognise the cheques paid into the account and didn't carry out the transactions that moved these funds out of his account. He contacted NatWest about this and it responded in November 2021. It said it felt it had investigated his fraud concerns but ultimately was satisfied he was liable for the transactions.

On 15 January 2023 Mr L contacted NatWest again to complain that the fraudulent transactions hadn't been investigated properly and he was unhappy that NatWest had allowed him to exceed his agreed overdraft limit.

With regards to the fraud element of his complaint NatWest confirmed the matter had been investigated, and the appeal process had been followed. It said if Mr L wanted the fraudulent transactions investigated again he could contact the fraud team. It stated that overdraft limits can be exceeded in certain circumstances so it was satisfied this was fair.

Mr L was unhappy with this response and brought the complaint to our service. Our investigator considered the complaint. They didn't think there was sufficient evidence that supported the transactions were fraudulent and thought the business was acting reasonably in holding Mr L liable for them. Mr L didn't accept this so the complaint has been passed to me to make a decision.

I issued my provisional decision on 29 November 2023 setting out why I didn't intend to uphold the complaint. An extract from my provisional decision is set out below:

“Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I must reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened given the available evidence.

The relevant law surrounding authorisations are the Payment Services Regulations. The basic position is that NatWest can hold Mr L liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them. Authorisation is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, NatWest has supplied evidence that shows Mr L's online login details were used to make the payments and I'm satisfied the disputed transactions were authenticated.

Consent refers to the way in which NatWest and Mr L agreed to operate the account to allow NatWest to make payments on Mr L's behalf. For example, NatWest's terms and conditions set out that if a payment is arranged through the use of a device (in this case Mr L's mobile banking app), then NatWest accept that the instruction to make the payment is authorised by the account holder.

But the regulations relevant to this case say that is not, on its own, enough to enable NatWest to hold Mr L liable. I also need to think about whether the evidence suggests it's more likely than not Mr L consented to the payments being made. I can't know for certain who carried out the disputed payments, as I wasn't present at the time. So, in order to reach my decision, I take all the available evidence into account and make my decision based on what I think is more likely than not to have happened.

Having looked at all the evidence and considered Mr L's testimony carefully, I'm not persuaded by what he has said. And on balance I've ruled out that a third-party was responsible for making the payments without Mr L's consent. So, I don't think it would be fair or reasonable to say NatWest shouldn't hold him liable for the debt accrued on his account. I say this for the following reasons:

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- Most of the transactions in dispute were transfers to third parties Mr L has made payments to previously. This point has been put to Mr L but he hasn't been able to provide any plausible evidence or testimony to explain this. If these transactions were unauthorised and Mr L had no knowledge of them, it's not clear why or how they were being made to individuals he clearly had an existing relationship with.*
- Some of the transfers that were made during the period Mr L said scammers had access to his online banking were made to Mr L's own accounts with NatWest and another bank. It's not clear why a scammer would send money to Mr L's own accounts. Mr L hasn't said he made these transactions, but if these were genuine transactions made by Mr L amongst the transactions he says were made by scammers, it's not clear why he was moving money that had been credited to his account from unknown sources. It's also not clear why, if he was logging on to make genuine transactions, he didn't notice thousands of pounds moving through his account he didn't recognise at that time.*
- All of the payments in dispute appear to have been made using Mr L's online banking app. He hasn't been able to explain how someone unknown to him would've been able to obtain all of his online banking details. He's said he was scammed shortly before the payments were made, but described having provided his payment details to the scammer, not his online banking login information. He's also explained he lost his card around the same time but neither of these things explain how scammers would've obtained his online banking log in information.*

- *When questioned further specifically around this point by the investigator, Mr L said he may have given the scammer his online banking login information. This is the first time Mr L suggested this was a possibility and he hasn't provided any additional detail around this. So I haven't found this point to be particularly persuasive in light of some of the other evidence I've outlined here. Particularly as it's not clear why Mr L only mentioned he may have given scammers his online security log in information for the first time years after the disputed payments were made. It's also not clear why he would've thought a mobile phone company would need his online banking log in information.*
- *Mr L has said it couldn't have been him who made the payments because his account had been restricted following NatWest's decision to close his account. Evidence provided by Nationwide suggests the account was restricted after all of the disputed payments were made. And the evidence Mr L has provided to show his account was restricted (a text message confirming his account is closed) is dated after all the disputed payments were made. And whilst I've noted he's provided the cheques that were paid into the account which state 'account closed' – this relates to the sending account, not Mr L's own account with NatWest. So I don't think I have seen evidence the account was restricted when the disputed payments were made. But I'd also add that if access to his account had been restricted it seems unlikely that anyone, including scammers, would've been able to log on to his online banking app using his log in details.*
- *Mr L has said one of the accounts in his own name that money was being moved into was already closed when the transactions were being made so it couldn't have been him who made them. He hasn't provided any evidence in support of this. But I'm not sure this is relevant here. It's not clear why a scammer would transfer money to any account that didn't benefit them whether they knew the account was in operation or not. So I don't think this point would support that the transaction was carried out by scammers.*

I've taken all of these points into account in the round, along with Mr L's testimony. Overall and on balance, I think NatWest has acted reasonably in holding him liable for the payments on the basis he likely authorised them. So I don't think it's responsible for the ongoing financial hardship he's described in relation to this debt

Mr L has complained that NatWest has never looked into his fraud complaint fully. For the reasons I've outlined above I'm satisfied it has reached a reasonable conclusion based on the information available to it. It has told Mr L he can contact its fraud department again so they can investigate further should he wish to.

Should NatWest have allowed Mr L to effectively borrow beyond his agreed overdraft limit?

Mr L has raised concerns that he's been able to effectively borrow more than his agreed overdraft limit. But the terms and conditions of his account set out that if Mr L makes a payment instruction that takes him beyond his agreed overdraft limit, this will be treated as a request for unarranged borrowing. For the reasons given I'm satisfied NatWest has acted reasonably in treating the disputed transactions in this case as authorised by Mr L. So I'm satisfied it's also acted reasonably in treating the payment instructions as a request for unarranged borrowing and holding him liable for the debt linked to the accounts.

I've also considered that in this case, the debt Mr L is disputing has come about due to the way NatWest has handled the foreign cheques paid into his account. It appears the cheques were sent for negotiation. This means the bank converts the value of the cheque into sterling

and will either credit the account straight away or within a few days. In the meantime the cheque is sent to the paying bank for clearance.

So if the cheque is returned as unpaid the bank can re-debit the money from the customer's account and cheques can be returned at any time. I would generally expect a customer to be told of these risks when a cheque is sent for negotiation.

Having consulted NatWest's terms and conditions and website it explains that foreign cheques paid by negotiation will be credited to a customer's account within two days and can be recalled for up to seven years. It's not clear if NatWest did more to explain to Mr L how the foreign cheques paid into his account would be handled. But, even if it didn't explain the risks further, on balance, I'm not persuaded this changes the outcome here.

It's not clear what the circumstances of the cheque payments in this case were. Mr L has said he had no knowledge of the cheques or the payments that spent them. So it's not clear what the payments were for, why they were made immediately after the cheques were credited to the account or Mr L's relationship with the sender.

I think it's reasonable Mr L should be held liable for spending the money for the reasons given. But because the circumstances of the payments are unknown, and because of the discrepancies in Mr L's testimony overall, I'm not persuaded it's more likely than not Mr L would've acted differently had he been clearly told of the risks involved in spending the money."

I said I'd consider any further information provided by Mr L or the business by the deadline given before issuing my final 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.

NatWest didn't respond to my provisional decision by the deadline provided. Mr L did. I've considered his points very carefully, but overall, his comments haven't persuaded me to depart from the findings outlined in my provisional decision.

I'm conscious Mr L has asked several questions about the evidence I've reviewed and what he thinks I should have looked at in order to reach a fair conclusion in this case. I'd like to reassure Mr L I have considered all his comments, but it is for our service to decide what information we need in order to fairly decide a case. So I won't be responding to everything he's said here.

This isn't intended as a discourtesy, but reflects the informal nature of our service. It also reflects that my role is to consider all of the evidence available and reach a finding on what I think is more likely to have happened overall. This means the outcome doesn't necessarily turn on one part of the evidence, it's a balance of all of the evidence and circumstances available here.

However, there are some points I have responded to specifically to provide further clarity.

- Mr L has continued to question why NatWest has allowed him to borrow significant amounts from it in this case

As I explained in my provisional decision, according to the terms and conditions Mr L accepted when he opened the account, any payment authorised beyond his agreed overdraft limit is treated as a request for borrowing.

Whilst the money was available in the account when the transfers in dispute were made in this case, because the funds were credited while the cheques were being negotiated, spending the funds linked to them was a risk as the amounts could be debited from the account if for any reason the cheques were returned unpaid, which they were in this case. I've now seen that NatWest wrote to Mr L confirming this when it received the cheques in question.

From what I understand Mr L's point here is that NatWest wasn't acting reasonably in allowing him to effectively borrow such a large amount. But ultimately, I'm satisfied NatWest is acting reasonably in holding Mr L liable for spending the money and therefore liable for repaying it.

- Mr L said he didn't know the recipients that received the funds but had sent money to them previously is because a friend's uncle asked him to

In response to my provisional decision Mr L has, for the first time, said he has an existing relationship with the recipients of the funds because he was previously asked to pay them some money by a friend's uncle. He hasn't provided any additional information about why he sent this money, what he understood of the situation, why he thinks scammers also would've sent money to one or more of the same people, what the money was for or how this might relate to the scam he says took place.

It's also not clear why he's never mentioned this before. He's said it's because he wasn't aware it was the same recipients, but I can see it has been stated throughout Mr L's complaint the recipients are individuals he has an existing relationship with. So it's not clear to me what new information he's more recently received that has allowed him to make this connection for the first time.

In the circumstances I haven't found this version of events to be particularly persuasive. But in any event it doesn't change the outcome here. Mr L clearly had an existing relationship with the people he says scammers sent his money to. And I've taken this into account alongside all the other evidence outlined above when reaching the conclusion that I don't think it's more likely than not scammers carried out the transactions Mr L is disputing.

- Mr L maintains the transactions were made after his account had been closed and he feels this proves scammers were carrying out the transactions.

In the case of one of Mr L's accounts, as far as I've seen no transactions were carried out after the account was closed.

In the case of the other account, it appears to have been restricted, not closed, on 30 October 2019. Following the restriction of Mr L's use of this account, further unpaid cheques were debited from it as they'd been returned unpaid. I don't think this supports that scammers were accessing the account after it was closed or that this offers any proof Mr L didn't carry out the transactions he's disputing.

NatWest has said this account wasn't closed until November 2023. So the last transaction Mr L is disputing appears to have been carried out several years before this, not after the account was closed as he's said.

But even if Mr L's online banking details were used to somehow access the account while it was restricted or closed due to an error on NatWest's part, I still don't think this offers persuasive evidence scammers more likely than not accessed his account for all the other reasons I've outlined here.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 April 2024.

Faye Brownhill
Ombudsman