

## **The complaint**

Ms T complains that National Westminster Bank Plc didn't do enough to protect her from the financial harm caused by a scam, or to help her recover the money once she'd reported the scam to it.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

On 4 November 2021 Ms T received a telephone call from someone I'll refer to as the scammer who claimed to be calling from her national embassy. The scammer said she'd been in close contact with someone who had tested positive for COVID-19 when she was in hospital on 21 October 2021.

Suspecting this might be a scam, Ms T said she hadn't been in the country since 2018. But the scammer had her personal details including her full name, home address and date of birth. They said her identity might have been compromised so she should report it to the police.

The call was then connected to someone who claimed to be a police officer who said according to her ID card number, Ms T was involved in a highly classified, very serious international money laundering case and she would be deported within a month if there was no new evidence in her favour. They also said she shouldn't tell anybody, including her own family.

The scammer kept in touch with Ms T through WhatsApp and added her to a group chat with two others also claiming to be police officers. They said she could be in custody for more than three months but she could send some funds to be used for her release on bail pending the trial.

The scammer instructed her to open an account with an Electronic money Institution ("EMI") which I'll refer to as "W" and to pay money into that account from her NatWest account. She opened the account on 26 November 2021 and between 26 November 2021 and 15 December 2021, she made eight transfers to W totalling £134,000. From there, she transferred the funds to the scam on the understanding they would be returned to her as a lump sum payment by the end of the month.

But on 22 December 2021 the scammer told Ms T she would need to clear all the chat histories and exit the WhatsApp groups as the case was highly classified. She realised she'd been scammed when she heard nothing further.

She complained to NatWest but it refused to refund any of the money she'd lost. It said she'd transferred the funds to her own account so it wasn't the point of origin for the scam, and there would be no recourse as the payments had successfully reached the recipient account before being withdrawn. It also said that as the payments were to an account in her name, the CRM code wouldn't apply. It explained its fraud prevention system is set up to monitor

activity for the latest fraud trends and if a transaction matches a known trend, a security check will be generated.

Ms T wasn't satisfied and so she complained to this service. Her representative argued that she hadn't made any similar payments from the account and that as W was a new payee the payments should have been flagged. They said NatWest should have stopped the payments and that its failure to do so represented a missed opportunity to have prevented her loss. NatWest said Ms T had paid an account in her name and then made an onwards payment to the scam, so she would need to raise a scam case with W. It said the payments weren't suspicious because she'd paid an account in her own name, so there would have been no reason for it to have declined the payment.

Our investigator felt the complaint should be upheld. She said there was no spending history to compare the payments with but Ms T was paying large amounts to a new payee and the payments were all made within a month, so she thought NatWest should have intervened. She explained that Ms T was convinced the scammer was genuine and that she was scared that she would be deported and convicted if she didn't make the payments. She also believed that she wasn't allowed to share information about what was happening with anyone, even her husband. So she accepted Ms T wouldn't have been open with NatWest if she was asked why she was making the payment.

However, Ms T had explained that the scammer had told her to say she was converting currency and that if NatWest had questioned her further about that, she wouldn't have known what to say. Because of this, our investigator didn't think she would have been able to provide satisfactory responses to probing questions and it's likely she'd have been asked to attend the branch where, ultimately, the scam would have come to light.

Our investigator was satisfied that NatWest's failure to intervene represented a missed opportunity to prevent Ms T's loss and so she recommended that it should refund the money Ms T lost from the first payment onwards.

NatWest asked for the complaint to be reviewed by an Ombudsman. It queried why it is solely liable for the loss when the fraudulent transactions took place from W. It also argued that it wouldn't have uncovered the scam as Ms T was heavily under the spell of the scammers and determined to send the funds. And that credits into an account followed by debits out to a customer's own account with another UK financial institution aren't unusual, particularly when there are no other fraud triggers present.

### **My provisional findings**

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Ms T says she's fallen victim to, in all but a limited number of circumstances. NatWest had said the CRM code didn't apply in this case because Ms T was paying an account in her own name, and I was satisfied that's fair.

I was satisfied Ms T 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of her bank account, Ms T is presumed liable for the loss in the first instance. I was also satisfied that Ms T was scammed, but although she didn't intend her money to go to scammers, she did authorise the disputed payments. NatWest is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

## *Prevention*

I thought about whether NatWest could have done more to prevent the scam from occurring altogether. It ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Ms T when she made the payments. If there are unusual or suspicious payments on an account, I'd expect NatWest to intervene with a view to protecting Ms T from financial harm due to fraud.

The payments didn't flag as suspicious on NatWest's systems. I considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Ms T normally ran her account and I think they were. Ms T was paying an account in her own name and so there wasn't anything suspicious about the nature of the payee. But it was a new payee, the first payment was £20,000 which was unusual for the account, and it followed several large credits into the account. So, I thought NatWest should have intervened.

I thought it should have contacted Ms T and asked her why she was making the payment. It's evident she really believed what she'd been told by the scammers and that she'd been coached to lie, so I didn't think she'd have told the truth about the circumstances of the payment. However, Ms T had explained that the scammers had told her to tell the bank the payment was for a 'currency investment' and that if she'd been asked further questions about that she'd have found it difficult to answer.

I thought that if NatWest had contacted Mr T and she was unable to give a convincing explanation for why she was making the payment, this would have been a red flag that she was at risk of fraud. And although it wouldn't have known for sure that she was being scammed or the precise nature of the scam, it could have provided some general scam advice, which would include asking whether she'd been contacted out of the blue for example by someone saying they were the police. It could also have asked whether she'd been told to lie to the bank and advised her to do some research before going ahead with the payments.

I explained we can never know how Ms T would have reacted, but the circumstances would have fitted with a general scam warning and if Ms T was made to pause to think about the circumstances. I thought it was possible she'd have questioned what she was being asked to do by the scammers. Critically, a Google search would have shown the circumstances fitted with a common scam type and as it's clear Ms T's actions were driven by fear rather than a desire to make a profit, I had no reason to think she wouldn't have done some research if advised to do so by her bank. And had she done so, I thought it's likely she'd have realised she was being scammed.

I accepted NatWest wouldn't have had enough information to say for sure that Ms T was being scammed, but it just needed to say enough to encourage her think about what she was doing and had it do so I thought, on balance, the scam would have been prevented. Because of this, I said I was minded to direct that NatWest should refund the money Ms T lost from the first payment onwards.

## *Contributory negligence*

I considered whether the settlement should be reduced for contributory negligence, but I didn't think it should. Ms T had explained that the scammers were very convincing and that her actions were driven by fear of what might happen if she failed to carry out their instructions.

Having considered the circumstances of this scam, I was satisfied it was sophisticated and I didn't think it was unreasonable for Ms T to have thought it was genuine.

I'd seen no evidence that Ms T ignored any red flags or warnings and consequently, I didn't think she contributed to her own loss. So, whilst there may be cases where a reduction for contributory negligence is appropriate, I didn't think this was one of them.

### *The settlement*

Ms T has also complained about the actions of W. Our service's ability to investigate complaints together and apportion the burden of redress between respondents is the subject of no specific rule and only limited guidance, which can be found in the FCA's Handbook at DISP 3.5.3G and DISP 3.6.3G, which say:

DISP 3.5.3G: "Where two or more complaints from one complainant relate to connected circumstances, the Ombudsman may investigate them together, but will issue separate provisional assessments and determinations in respect of each respondent."

DISP 3.6.3G: "Where a complainant makes complaints about more than one respondent in respect of connected circumstances, the Ombudsman may determine that the respondents must contribute towards the overall award in the proportion that the Ombudsman considers appropriate."

I explained in my provisional decisions that I'd found there were failings not only by NatWest, but also W in what reasonably could've been expected of them. And with respect of these payments, which both parties were involved with, I thought it was fair to ask each of them to pay half the loss which could've prevented.

### *Compensation*

I said Ms T isn't entitled to any compensation.

### *Recovery*

I didn't think there was a realistic prospect of a successful recovery because Ms T paid an account in her own name and moved the funds onwards from there.

## **Developments**

Ms T has said she's happy to accept the findings in my provisional decision and NatWest has indicated it will agree as a gesture of goodwill.

## **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.

As both parties have agreed to the findings in my provisional decision, my final decision will be the same.

## **My final decision**

My final decision is that National Westminster Bank Plc should:

- refund 50% of the money Ms T lost from the first payment onwards.
- pay 8% simple interest\*, per year, from the respective dates of loss to the date of settlement.

\*If National Westminster Bank Plc deducts tax in relation to the interest element of this award it should provide Ms T with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 2 July 2024.

Carolyn Bonnell  
**Ombudsman**