

The complaint

Mr D and Ms H complain that National Westminster Bank Plc (NWest) won't refund money they lost in an impersonation scam.

What happened

What Mr D and Ms H say:

In November 2023, Mr D and Ms H were contacted on their landline by someone who claimed to be a policeman – from a London police station. This person turned out to be a fraudster.

A week prior to the call, Mr D and Ms H had discovered their credit card was missing and NWest cancelled it and replaced it – the 'policeman' knew all about that and said a person with a clone of the card had been arrested. The fraudster also knew the details of Mr D and Ms H's bank accounts.

The fraudster called Mr D and Ms H several times and built trust with them. He explained he wanted Mr D and Ms H to help with an investigation into fake gold bars which were apparently being sold by a bullion retailer in Farringdon, London. Mr D was asked to travel to the shop, purchase £20,000 of gold bars – this would then be handed over to the police for testing. Mr D and Ms H were told the police would refund them under police insurance – a code was quoted for that.

Mr D travelled from his home to London and visited the retailer and bought the gold bars – by making a faster payment at a local London branch of NWest. He handed it to a 'special police courier' against a password that the police had advised.

Mr D had tried to call the police station in question but hadn't got through. He also called 101 but there was a wait of an hour.**(continued)**

The payment and account activity is shown:

Date	Payment	Amount
10 November 2023	Transfer from savings	£19,537.27

10 November 2023	Faster payment in branch	£19,537.27
Balance after payment		£2,702.77 credit
Total loss		£19,537.27

When Mr D was traveling home he got suspicious they'd been scammed. Mr D and Ms H complained. They said:

- Mr D was 72 years old, and as an elderly person was susceptible to social engineering and manipulation techniques.
- The fraudster knew several things about their bank accounts.
- Mr D checked the phone number of the police station – and it was apparently the number he had been called from – the number had been spoofed. Mr D tried to call 101, but there was a long wait time of over an hour. He was in a hurry, as he was catching the train to London and so hung up.
- The police officer quoted a badge ID – so he appeared genuine.
- The NWest account was only used for day-to-day purchases and this was a large, unusual payment which was out of character.
- Mr D travelled 60 miles from his home to a London branch to make the payment, and it was funded by a like transfer into the account.
- Mr D had never used the branch before, nor purchased gold before.
- The branch of NWest was local to the gold bullion retailer – so they should've been alert to such scams.
- The checks by the branch were non-existent. Mr D hadn't been coached with a cover story and so would've been honest in his responses.
- Mr D and Ms H say that NWest should refund the money they've lost, plus 8% per annum simple. **(continued)**

What NWest said:

NWest didn't refund any money. They said they'd completed the necessary checks in the branch. Mr D was asked the reasons for the payment and the bank had no reasonable grounds to suspect it was part of a scam.

Our investigation so far:

Our investigator didn't uphold the complaint. He said:

- The Contingent Reimbursement Model (CRM) Code didn't apply as it covered faster payments made to a fraudster who had no intention of supplying goods or services. But here, the payment was made to a genuine business and the goods provided – but Mr D then gave the gold bars to the fraudster's representative as part of the scam.
- NWest questioned Mr D in the branch about the payment. Mr D confirmed he hadn't been coached by anyone and was asked several questions. If NWest had researched the company in question they would have found out it was a genuine business.
- The NWest branch was close to the gold retailer. It would've been fairly common for the branch to carry out similar business and make payments for the purposes of buying gold.

Mr D and Ms H didn't agree and asked that an ombudsman look at their complaint, and so it has come to me.

I made a provisional decision which upheld the complaint:

I'm sorry to hear that Mr D and Ms H have lost money in a cruel scam. It's not in question that they authorised and consented to the payment in this case. So although Mr D and Ms H didn't intend for the money to go to a scammer, they are presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider NWest should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether NWest acted fairly and reasonably in its dealings with Mr D and Ms H when they made the payment, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to a UK beneficiary – where someone is tricked into making the payments for which no goods or services are provided, or ever intended to be provided.

But in this case, the payment was made to a genuine retailer and the goods (the gold) was provided to Mr D. So, the Code doesn't apply here.

The first consideration here is: if the payment was of a sufficient size and was out of character with how Mr D and Ms H normally used the account – then we would expect NWest to have intervened and spoken to Mr D about it.

And it's reasonable for me to say that the account was used for normal day to day payments, expenses and receipt of state pension credits. There are some smaller transfers of between £1,000 and £2,000 to a savings account in the couple's name. But - the payment of £19,537, made at a branch many miles from Mr D and Ms H's home town, was clearly unusual.

And so – it was right for NWest to ask questions, which they did when Mr D went to the branch.

NWest was the expert in such matters and Mr D was asked some questions – and NWest have evidenced those and Mr D's answers. The bank completed a 'My Customer Protection Checklist'. The consideration of this is the crux of this decision.

I can see NWest verified Mr D's ID and then asked:

- If Mr D had been contacted by anyone; Mr D said he hadn't.
- The rationale for the payment was stated as 'purchasing gold bar' in a local bullion retailer.
- Mr D was asked if he had received any communication that created a sense of urgency for the payment to be made immediately. Mr D said 'no'.
- NWest recorded that funds had been received into the account by transfer from another account and that more than 50% of the balance had been used with the payment.

Our investigator considered those questions were sufficient, but I disagree. I think it's reasonable that NWest should've gone further here. I say that as:

- The payment was unusual – as I've said. Mr D and Ms H didn't make any other similar payments or anywhere near that.
- It was funded by an identical amount transferred into the account on the same day – from the savings account.
- The account was left with a low credit balance of £2,702.
- Mr D had travelled a long way from his home town branch (about 55 miles each way) to make the payment in the London branch. This was unusual.
- He stated he was buying gold bars. This is unusual for any reasonable person to do, and particularly a retired person in receipt of a state pension.
- The branch was located close to the bullion retailer – and I consider this placed a responsibility on the branch to ask more detailed questions about the circumstances.

The fact that Mr D was buying gold bars in an unusual transaction, and at a branch close to the bullion retailer – means that NWest, had they asked more probing questions, would've found out that Mr D and Ms H had been contacted by a fake police officer and uncovered the

scam – which must be more common for a branch in that location. But – I haven't seen any evidence that further probing was done. Probing should've included:

- Have you been contacted by anyone asking you to do this?
- Why are you buying gold bars, for what purpose?
- What are you going to do with them after purchase?

Mr D and Ms H have said they hadn't been coached or provided with a cover story – so there's no reason to suggest Mr D would not have been honest in his responses had he have been asked more.

So, I consider that NWest should've done more here and should refund the payment made.

Contributory Negligence: I considered whether Mr D and Ms H could've done more to protect themselves and should bear some of the loss. This appears to have been a well-planned and sophisticated scam, for example:

- The fraudsters had knowledge of Mr D and Ms H's bank accounts; and the loss of their credit card the week before.
- The number used was apparently the London police station, and Mr D checked it was so.
- Mr D and Ms H were convinced they were assisting the police in an inquiry.
- Mr D answered NWest's questions in the branch honestly.
- The gold was handed over to someone with a password given to them.

The only way Mr D could've protected themselves better – would've been to call 101 and hold on until it was answered. But he didn't - as he was in a hurry to get the train to London as part of the scam. And on this point – the fake police officer invited Mr D to call 101, so Mr D was convinced everything was OK.

So, on balance, I don't think it's reasonable for Mr D and Ms H to bear some of the loss here.

Recovery: We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. But here - as the payment was made to a genuine business, this wasn't an option NWest could follow. The point of loss was when Mr D handed over the gold bars to the fraudster.

The provisional decision said NWest should refund £19,537.27 plus interest at 8% per annum simple.

Responses to the provisional decision:

Mr D and Ms H accepted the findings. But NWest didn't. The bank argued that when Mr D was asked in the branch "*Have you been contacted by anyone asking you to do this?*" – he said 'no' – and if he hadn't, then NWest could've uncovered the scam. But as Mr D answered in that way, he should be responsible for the loss.

I now need to consider these points and make a 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.

I accept that the branch notes say Mr D said he hadn't been asked to make the purchase by another person. But on balance, I don't think that, of itself, means that NWest shouldn't have gone further. As the provisional decision said, there was enough here to expect the bank to have gone on to ask more questions such as:

- Where are the funds coming from to make the payment?
- Why are you buying gold bars? (bearing in mind he was a pensioner and the transaction was very unusual).
- What are you going to do with the gold after you've bought it? (he was to hand it to a courier against a password provided by the scammers).
- What are you making this payment from this branch – so far from your home and from your normal home branch of the bank? (he was told by the scammers to travel to London and hand the gold over).
- And the branch was near to the bullion retailer – which I think places an onus on NWest to be alert to such circumstances.

I consider that had NWest reasonably asked more questions, the scam would've likely been uncovered and prevented.

Therefore, having considered Mr D and Ms H's complaint again, my final decision is unchanged from the provisional decision.

Putting things right

NWest should refund £19,537.27 plus interest at 8% per annum simple from the date of payment to the date of settlement.

My final decision

I uphold this complaint. National Westminster Bank Plc must:

- Refund £19,537.27 plus interest at 8% per annum simple from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Ms H to accept or reject my decision before 15 July 2024.

Martin Lord
Ombudsman