

The complaint

Mr W complains that National Westminster Bank Plc won't refund the money he lost when he was the victim of a scam.

What happened

In May 2023, Mr W received messages through a social media network from someone who said they were a well-known actor. And as Mr W thought he had met the actor recently, and the messages included photos of them that weren't in the public domain, Mr W believed the messages were from the actor and continued to reply. The conversation continued and their relationship developed to the point where they were messaging most days and Mr W thought they were in a romantic relationship.

The messages then said the actor was sending Mr W a package containing a large amount of money, as a show of commitment to their relationship. And Mr W started to receive messages saying they were from a delivery company, and that he needed to pay a number of fees or charges before the package could be delivered. And as Mr W believed the relationship and the delivery to be genuine, he made a number of payments from his NatWest account to the bank account details he was given. Mr W also took out a loan with NatWest in order to fund some of these payments.

I've set out the payments Mr W made from his NatWest account below:

Date	Details	Amount
25 May 2023	To 1 st payee	£500
25 May 2023	To 2 nd payee	£3,400
25 May 2023	To 2 nd payee	£1,000
26 May 2023	To 3 rd payee	£8,000
26 May 2023	To 4 th payee	£7,500
30 May 2023	To 3 rd payee	£3,800
30 May 2023	To 3 rd payee	£7,500
30 May 2023	To 3 rd payee	£3,800
31 May 2023	To 5 th payee	£1,000
1 June 2023	Cash withdrawal	£8,000
2 June 2023	Cash withdrawal	£6,150
2 June 2023	To 5 th payee	£1,500
2 June 2023	To 5 th payee	£6,150
6 June 2023	Loan funds	£20,000 credit
6 June 2023	To cousin	£3,275
8 June 2023	Cash withdrawal	£900
9 June 2023	Cash withdrawal	£4,000
12 June 2023	To 6 th payee	£1,950

Unfortunately, we now know the messages were coming from someone impersonating the well-known actor and Mr W was the victim of a scam. After the scam was uncovered, Mr W reported the payments he'd made to NatWest and asked it to refund the money he had lost.

NatWest investigated and accepted it should have intervened when Mr W made some of the payments, so it offered to refund some of the payments he'd made. It was also able to recover some money from the banks the payments were sent to. But Mr W wasn't satisfied with NatWest's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Mr W's circumstances meant he had been vulnerable and less able to protect himself from the scam at the time. So they thought NatWest should refund the payments he made that were covered by the CRM code, but not the payments that weren't covered. NatWest accepted, but Mr W disagreed with our investigator so the complaint has been passed to me.

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.

Are the payments Mr W made covered by the CRM code?

I've first considered whether the CRM code applies to all the payments Mr W made as a result of this scam.

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code which NatWest is a signatory of. It sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scams. But it only covers certain types of payments made, in pounds sterling, between accounts based in the UK.

In this case, most of the payments Mr W made were bank transfers from his NatWest account to payees the scammers had given him the bank details for. So I think these payments are covered by the CRM code.

I've also seen evidence that the payment Mr W made to his cousin, on 6 June 2023 for £3,275, was then sent on to the scammers from his cousin's account. And the Lending Standards Board has confirmed the CRM code includes cases where a victim was tricked into sending money to a scammer's account via a family member or friend's account. So I think this payment is also covered by the CRM code.

But the remaining payments Mr W made, which I've highlighted in bold in the table above, were cash withdrawals – which aren't payments made between two UK accounts. And so the way the CRM code is written means I don't think it applies to the cash withdrawals Mr W made here.

The payments covered by the CRM code

As I explained above, the payments Mr W made to other payees and to his cousin are covered by the CRM code. This code requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

The CRM code also requires firms to assess whether a customer was vulnerable to the APP scam they fell victim to at the time it occurred. The relevant sections state:

“A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.

This should be assessed on a case-by-case basis.

In these circumstances, the Customer should be reimbursed notwithstanding the provisions in R2(1), and whether or not the Firm had previously identified the Customer as vulnerable.

Factors to consider include:

- (a) All Customers can be vulnerable to APP scams and vulnerability is dynamic. The reasons for dynamics of vulnerability may include: the personal circumstances of the Customer; the timing and nature of the APP scam itself; the capacity the Customer had to protect themselves; and the impact of the APP scam on that Customer.*
- (b) A Customer’s personal circumstances which lead to vulnerability are varied, may be temporary or permanent, and may vary in severity over time.*
- (c) APP scams may include long-running APP scams or in the moment APP scams.*
- (d) The capacity of a Customer to protect themselves includes their knowledge, skills and capability in engaging with financial services and systems, and the effectiveness of tools made available to them by Firms.*
- (e) The impact of the APP scam includes the extent to which the Customer is disproportionately affected by the APP scam, both financially and non-financially.”*

Mr W has said he was suffering from exhaustion and severe burnout at the time of the scam. He’s said he was working extremely long hours as a result of an important work project and that this left him feeling nervous, shaky and unable to think critically. And he’s said this led to him falling victim to this scam.

I’ve seen copies of notes from Mr W’s doctor, which say he was assessed shortly after the scam and the doctor felt he was suffering from work-related stress and burnout. The notes also show the symptoms of this continued for several months after the scam and, as a result, Mr W was signed off as not fit for work for at least five weeks. So I think these notes show that Mr W’s circumstances were having a significant and long-term impact on him. And, due to the nature of his conditions, I don’t think they would have started suddenly and so were likely affecting him for some time before the assessment by the doctor.

The symptoms of burnout include tiredness or exhaustion, feeling helpless, isolated, anxious and overwhelmed, and difficulty concentrating – which match the symptoms Mr W says he was suffering from and which caused him to fall victim to this scam. And from what I’ve seen of his communication with the scammers, there are several occasions where Mr W appears to identify concerns about what he is being told but then moves on from these concerns with very little explanation or justification from the scammers – which I think supports the suggestion that he is struggling to concentrate or think critically. So I think his conditions were having a significant impact on him at the time of the scam.

And so given his circumstances at the time, I think Mr W was vulnerable to this type of scam. I think his perception of the possible risks involved and the steps he could take to address them was significantly and adversely affected by his circumstances at the time.

I therefore think Mr W meets the definition of vulnerable from the CRM code, as I don't think it would be reasonable to expect him to have protected himself against this particular scam. So I think NatWest should reimburse the money he lost from the payments he made which are covered by the CRM code, in full.

The payments not covered by the CRM code

As I explained above, the cash withdrawals Mr W made aren't covered by the CRM code. And Mr W accepts he made these withdrawals himself. So while I recognise that he didn't intend for the money to ultimately go to scammers, he did authorise these payments. And so the starting position is that he is liable for the payments and NatWest doesn't have to refund them.

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 think NatWest 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 made 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.

So I've also considered whether NatWest should have identified that Mr W was potentially at risk of fraud as a result of these payments, or otherwise done more to protect him. But even if NatWest had recognised that Mr W was at risk of financial harm from fraud when making these withdrawals, I don't think the action I would have expected it to take would have prevented his loss. I'll explain why below.

I think a proportionate response to the risk I think NatWest should have identified from the cash withdrawals would have been for it to carry out some form of human intervention with Mr W, asking him open-ended and probing questions about the purpose of the withdrawals. But, even if it had done this when Mr W made the first cash withdrawal here, I'm not persuaded it would have prevented his loss.

When speaking with our service about this scam, Mr W has accepted that he would lie to his banks in order to get them to put payments through. NatWest has sent us evidence that the purpose Mr W gave for the loan he took out with it was 'motorcycle', which he now accepts was incorrect. And NatWest's evidence shows it did ask Mr W about the payments on his account, and he misled it by saying the payments were for pieces of art and by bringing pieces of artwork into branch which he said were connected to the payments.

I appreciate that the vulnerability mentioned above impacted Mr W's willingness to do these things. But I think it's likely that, if NatWest had intervened and asked questions about the cash withdrawals, Mr W wouldn't have given it accurate information about them or the circumstances surrounding them – as happened with the questions he was asked during other interactions with NatWest. And so I don't think NatWest would've had significant concerns following its questions and I don't think any warning I would have expected it to give Mr W following those questions would have stopped him from making the withdrawals or losing the money he did.

From what I've seen, I also don't think NatWest should have identified or been aware of Mr W's vulnerability at the time, or should have taken significantly different action as a result.

So I don't think it would be fair to require NatWest to refund the money Mr W has lost from these cash withdrawals.

And as I don't think anything I would reasonably have expected NatWest to do would have stopped Mr W from making the payments, I also don't think it would have stopped him from taking out the loan. And so I also don't think it would be fair to require NatWest to refund any of the loan payments, charges or interest.

Summary

I think NatWest should refund the payments Mr W made that are covered by the CRM code, as I think his circumstances meant he was vulnerable to this scam. As Mr W has already received a refund of some of these payments, and some funds have been recovered from the accounts they were sent to, NatWest should now refund the remaining payments that have not yet been refunded or recovered.

I don't think NatWest should be required to refund the cash withdrawals Mr W made that aren't covered by the CRM code, as I don't think anything I would reasonably have expected it to do would have prevented his loss.

My final decision

For the reasons set out above, I uphold this complaint in part and require National Westminster Bank Plc to:

- Refund Mr W the payments he made as a result of this scam, which are covered by the CRM code and which have not previously been refunded or recovered
- Pay Mr W 8% simple interest on this refund, from the date it initially responded to his claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 October 2024.

Alan Millward
Ombudsman