

The complaint

The estate of Mr S complains that National Westminster Bank Plc ("NatWest") didn't protect the late Mr S from losing money to a scam in 2022.

The estate of Mr S's complaint has been brought by a representative.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, in April and May 2022, the late Mr S made nine payments totalling £66,590 from his NatWest account as a result of an alleged scam. The payments have been detailed elsewhere so I won't repeat them all here.

The late Mr S subsequently realised he'd been scammed and got in touch with NatWest. Ultimately, NatWest didn't reimburse his lost funds, so Mr S referred his complaint about NatWest to us. Mr S very sadly passed away since this time, and the complaint is now pursued on his estate's behalf by its executor. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

On 26 August 2024 I issued my provisional decision on this complaint. I wanted to give the parties a chance to respond before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

"What I've provisionally 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've summarised this complaint briefly, in less detail than has been provided, and in my own words. I've focused on what I think is the heart of the matter. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

First, let me clarify exactly what this decision is about. The late Mr S referred and had resolved at this service two previous cases. That's one case against NatWest about payments in 2018 with regards to an investment scam; and a second case, this time against a bank I'll call "L", about payments in 2019 with regards to an investment scam. But the estate of Mr S doesn't just have this one remaining case here with us about NatWest (and these further scam payments in 2022); there's another separate but linked complaint here, also about NatWest, but about further scam payments in 2020-2021. At the same time as this provisional decision about the NatWest scam payments in 2022, I've concurrently issued a provisional decision on the separate but related complaint about the NatWest scam payments in 2020-2021.

I'm not intending to uphold this complaint. I'll explain why.

I don't doubt the late Mr S was the victim of a scam here. I'm extremely sorry to hear about this and the very sad passing of Mr S in November 2022. I totally understand why the estate of Mr S thinks it's unfair the estate should bear this loss, and why it's been doing everything to try to recover all the money it can. I can see from the late Mr S's case history that it appears he was, sadly, likely, at the time, particularly vulnerable to being scammed. This was an incredibly large amount of money to lose to scams, and fraud of this type can be deeply upsetting. Ultimately, however, the estate of Mr S has suffered this loss because of fraudsters, and this doesn't automatically entitle it to a refund from NatWest. It would only be fair for me to tell NatWest to reimburse the estate of Mr S its loss (or part of it) if I thought NatWest reasonably ought to have prevented the payments (or some of them) in the first place, or NatWest unreasonably hindered recovery of the funds after the payments had been made; and if I was satisfied, overall, this was a fair and reasonable outcome.

Prevention

I'm satisfied the late Mr S authorised the relevant payments. NatWest would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, the late Mr S is presumed liable for the loss in the first instance, in circumstances where he authorised the payments. That said, as a matter of good industry practice NatWest should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect NatWest to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds). Bearing this in mind, I've considered whether NatWest acted fairly and reasonably in its dealings with the late Mr S when it processed the relevant payments.

In this case, there's no question that many of Mr S's nine scam payments made from his NatWest account in April and May 2022 were sizeable. It appears Mr S had made legitimate payments of a similar size before: I note in particular two payments in December 2021 for £20,000 each (excluding, of course, the previous payments I know Mr S made in 2020 and 2021 as a result of other scams). But I agree with our Investigator that NatWest reasonably ought to have intervened when the late Mr S instructed his payment of £19,000 on 10 May 2022 (payment 6). This is because the frequency and amount of incoming and outgoing payments had changed in April and May 2022. NatWest also would have known by now that Mr S had previously fallen victim to scams both in 2018 (which our Investigator issued their assessment on in April 2020) and 2020-2021 (which Mr S notified NatWest of in 2021, and by March 2022 latest). So NatWest ought to have realised Mr S was vulnerable to scams – and I'm persuaded that NatWest ought to have intervened in Mr S's instruction to make the £19,000 payment on 10 May 2022, and quite possibly before that (but didn't).

But if NatWest failed to intervene in these payment instructions in April and May 2022 when it should have, this isn't enough by itself to uphold this complaint – I'd need to be satisfied that appropriate intervention from NatWest would most likely have prevented Mr S's loss. And, in this particular case, I'm not persuaded appropriate intervention from NatWest most likely would have prevented Mr S from ultimately making these payments and losing this money to the scam.

I say this because the late Mr S also held an account with a third-party bank, "C", at this same time, that did intervene in some other payments Mr S was making as a result of the scam. C has provided us with recordings of calls it had with the late Mr S in this regard, which span from 26 to 30 April 2022. During these calls:

- C told Mr S that it had seen a large increase in fraud and scams so it was calling him to check he wasn't about to lose money to fraud or a scam.
- C asked Mr S if he'd been approached by anyone, or pressured, to make the payment. Mr S said no.
- C explained that if Mr S had been asked to lie, or if he'd been coached on what to say (about the payments), this would indicate fraud and he should end the call and contact the police. Mr S said he hadn't been asked to lie.
- Mr S was asked about remote access software.
- Mr S wasn't upfront with C about the reasons for his payments. On one call, he explained one payment to another of his accounts was so he could go and look for a car. And on another call, he gave C a totally false story about how his payment was for his brother.
- C asked Mr S if there was something affecting him on a personal level affecting his decision to make the payment. Mr S said there'd been no life event affecting his decision making.
- C said it would read Mr S some information about binary options and crypto. But Mr S said he already knew about that, and his payments were nothing to do with trading or anything like that. He said he'd done the whole crypto thing before and had known about crypto for 10 years or so.
- C said crypto wasn't regulated and Mr S said he knew all about that, as he'd done this many times. When C told Mr S he could check the Financial Conduct Authority (website) for crypto scam warnings, Mr S said he knew all about that too.
- Mr S said everything was totally above board, that there'd be no comeback on the bank, and that it would be on his own head – but he knew everything was 100% fine.

I'm also mindful what I've said in my provisional decision about Mr S's payments in 2020 and 2021 from his NatWest account – that NatWest intervened in a legitimate payment Mr S made from his NatWest account in September 2021, and Mr S also wasn't upfront in that call with NatWest: NatWest told Mr S it could see he had active remote access software on his PC, and it asked him what it was for – and Mr S said this was for him to use when he talked to certain friends who struggled with their computers from time-to-time; that he would "hop on" to the software to view their PC to help them through things.

I have to be fair. And on the evidence before me, I'm not persuaded any level of reasonable intervention from NatWest at any stage is likely to have made a difference here. Given how Mr S reacted to C's intervention calls, I think it's most likely he wouldn't have been upfront with NatWest about the real reasons for these payments. The evidence suggests it's likely Mr S was intent on making the payments and not being open about his reasons, and that he likely would have done so anyway. I've considered here whether NatWest should have stopped the payments. But I note that C did stop some of Mr S's payments, but that Mr S continued to make the payments anyway through other routes. So, even if I thought NatWest should have refused to make the payments, I think, based on what happened, it's most likely Mr S would still, ultimately, have ended up paying and losing the money to the scammers. I'm therefore not persuaded that I can say NatWest unreasonably failed to prevent Mr S losing this money to the scam.

Recovery

The payments were sent to Mr S's account with a legitimate crypto exchange, from where Mr S then moved the funds onto the scammers. As the payments were made to an account Mr S owned and controlled (but they'd already been sent on from there to the scammers), I'm satisfied there's nothing NatWest could've reasonably done to recover the funds. So I'm satisfied I can't say NatWest unreasonably hindered recovery of the funds.

I'm really sorry the late Mr S lost this money and to hear about everything that happened. But despite my natural sympathy, I can't fairly tell NatWest to refund the estate of Mr S where I don't think NatWest unreasonably failed to prevent the loss.

My provisional decision

For the reasons explained, I'm not intending to uphold this complaint."

NatWest didn't have any further comments. The estate of Mr S's representative said it disagreed with my provisional decision, however, and explained why.

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.

There's no need for me to set out here everything the estate of Mr S's representative has said in response to my provisional decision. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it; I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I've carefully considered the estate of Mr S's representative's response to my provisional decision, but the points it has made don't persuade me to reach a different conclusion.

This isn't an easy message to give, given the sad passing of Mr S in November 2022 and his vulnerability at the time these scam payments were made. But whilst I note the estate of Mr S's representative's reference and points it's made about the Banking Protocol, the bottom line for me in this case is that even if I thought NatWest's intervention should have extended this far, I still don't think it's most likely this would have made a difference in this particular case. Of course there are many instances where Banking Protocol, if implemented, would prevent a scam; Banking Protocol, after all, is a serious intervention indeed. But unfortunately there are still cases we see where some victims nonetheless proceed to make the scam payments anyway – despite Banking Protocol being implemented – sometimes through other accounts they hold, or other accounts they newly set up.

I don't say this lightly at all, and I've thought about this really carefully. But as I said in my provisional decision, I note that in 2022 C did stop some of Mr S's payments, but Mr S continued to make the payments anyway through other routes. I can't know for certain if the same would have happened in this case with NatWest. But I have to be fair. The evidence suggests Mr S was unfortunately determined to proceed with the payments, despite what he was told. And unfortunately, whilst as I've said this is a difficult message to give, I just don't think in this particular case it's most likely NatWest reasonably would have been able to prevent Mr S losing this money no matter how far its proportionate intervention had gone.

This means I haven't been persuaded to depart from my provisional decision. And having reviewed everything again, I've reached materially the same conclusions as in my provisional decision and for materially the same reasons.

I'm really sorry the late Mr S lost this money and to hear about everything that happened. But despite my natural sympathy, I can't fairly tell NatWest to refund the estate of Mr S where I don't think NatWest unreasonably failed to prevent the loss.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 18 October 2024.

Neil Bridge
Ombudsman